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RECORD, CASE No. 13,652.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~430~~. 99

DAVID MAY AND ADOLPH HIRSCH, APPELLANTS,

vs.

DANIEL K. TENNEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED SEPTEMBER 25, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Note by clerk as to subpœna	12	7
Answer of David May and Adolph Hirsch	12	7
Replication to answer of May and Hirsch	27	16
Deposition of Nathan Lewis for complainant	29	16
Depositions taken before Charles A. Hinckley, notary public	37	22
Evidence for complainant	38	22
Testimony of Nathan H. Thorn	38	22
Samuel Rich	47	27
Rudolph Ney	50	29
T. J. Cash	60	35
A. M. Harris	63	37
Louis E. Brown	70	43
Charles Sands	74	45
Samuel Rich (recalled)	82	50
Evidence for defendants	84	51
Testimony of Sam. Mayer	84	51

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 2, 1892.

	Original.	Print.
Testimony of Samuel Berry	89	55
Fred. Butler	92	57
Edward Strauss	98	61
L. H. Johnston	107	66
J. T. Cash	111	69
Sol. Strauss	115	72
Rudolph Ney	123	77
Jacob Schloss	140	88
David May	143	90
Adolph Hirsch	171	109
Stipulation as to testimony	187	120
Stipulation as to taking testimony	188	120
Exhibit A—Statement	189	121
2—Chattel mortgage from Rich to May and Hirsch, March 24, 1887	189	121
3—Promissory note from Ed. and Nat. Nathan to Rich, December 7, 1886	195	124
4—Invoice from Rich to May, January 10, 1887	195	125
5—Check of May to Rich, January 10, 1887	196	125
6—Check of May to Rich, January 14, 1887	197	126
7—Promissory note of Rich and May to Carbonate bank, February 10, 1887	197	126
8—Promissory note of Rich *et al.* to Carbonate bank, February 5, 1887	197	126
9—Promissory note of Rich *et al.* to Carbonate bank, December 10, 1885	198	127
11—Promissory note of Rich *et al.* to Carbonate bank, August 2, 1886	198	127
10—Promissory note of Rich *et al.* to Carbonate bank, August 2, 1886	199	128
12—Promissory note of Rich *et al.* to Carbonate bank, March 4, 1887	199	128
13—Promissory note of Rich *et al.* to Carbonate bank, January 18, 1887	199	129
14—Promissory note of Rich *et al.* to Carbonate bank, July 14, 1886	200	129
1—Inventory, taken March 25, 1887	201	129
Notary's certificate	231	165
Stipulation as to evidence of Samuel and Jacob Rich	232	165
Exhibit A—Notice to take testimony of Jacob and Samuel Rich in case of Lowenstein *vs.* May *et al.*	234	167
B– Affidavit of service of notice, &c.	235	167
Testimony of Jacob Rich	238	169
Commissioner's certificate	246	174
Stipulation to take testimony	248	176
Depositions taken before Emma A. Caswell, notary public	250	177
Evidence for complainant	250	177
Testimony of Daniel K. Tenney	251	177
Henry Liberman	252	178
Exhibit A^1—Promissory note of Rich to Liberman & Co., February 25, 1887	257	181
A^2—Promissory note of Rich to Liberman & Co., February 25, 1887	257	181

	Original.	Print.
Exhibit A[3]—Promissory note of Rich to Liberman & Co., February 25, 1887	257	182
A[4]—Promissory note of Rich to Liberman & Co., February 25, 1887	258	182
A[5]—Promissory note of Rich to Liberman & Co., February 25, 1887	258	182
B—Account of Liberman & Co. with Rich, September 26, 1887	259	183
Testimony of Henry Leopold	259	183
Exhibit C[1] to C[15]—Promissory notes of Rich and Nathan to Leopold Bros. & Co., June 1, 1886	260½	184
Exhibit D—Statement of account of Leopold Bros & Co. with Rich and Nathan	263	188
Testimony of Nathan Meyer	265	189
Exhibit E[1] to E[4]—Promissory notes of Rich and Nathan to Mayer, Engel & Co., June 1, 1886	266	190
Exhibit F—Account Mayer, Engel & Co. with Rich	268	192
Testimony of Henry W. Bliss	269	193
Exhibit G[1] and G[2]—Promissory notes of Rich and Nathan to Packer, McDonald & Bliss, June 9, 1886	270	193
Exhibit H—Account Packer, McDonald & Bliss with Rich, September 26, 1887	270	194
Admission as to indebtedness to Swisky & Co.	270	194
Exhibit I—Account of Swisky & Co. with Rich, February 7, 1886	271	195
Statements of Rich	271½	195
Notary's certificate	273	198
Stipulation as to evidence of Samuel Rich	276	199
Order denying motion to take further testimony	278	200
Order beginning hearing	279	201
Order taking cause under advisement	279	201
Order referring cause to master	280	202
Stipulation as to evidence	282	203
Confession of judgment	283	203
Judgment	287	206
Execution	289	207
Marshal's return	290	207
Depositions taken before Chas. A. Hinckley, notary public	291	208
Evidence for defendants	292	209
Testimony of Rudolph Ney	292	209
David May	301	216
Adolph Hirsch	309	221
Exhibit A—Deed from Samuel Rich to Rebecca and Louis Rich, June 13, 1887	314	224
B—Petition of Samuel Rich to the district court of Lake county, Colorado	314	225
Notice to take depositions	320	227
Notary's certificate	321	227
Examiner's report of testimony on behalf of complainant	322	228
Deposition of Samuel Rich	324	229
Exhibit A—Account of Rich with C. W. Little, April 30, 188–	331	233
Examiner's certificate	333	235

	Original.	Print
Examiner's report of testimony on behalf of complainant	335	236
Deposition of Samuel Rich	337	237
Examiner's certificate	339	238
Depositions taken before Chas. A. Hinckley, notary public	341	239
Deposition of Benjamin F. Stickley	341	239
O. P. Bassett	343	240
Notary's certificate	346	242
Order that creditors prorate and referring cause to master	347	243
Stipulation as to evidence before the master, &c.	349	244
Deposition of Samuel Rich in case of Lowenstein & Co. *vs.* May *et al.*	350	245
Exhibit 1—Account of Rich with Lowenstein & Co., February 21, 1887	373	260
Petition of Frankenthal *et al.* to be made complainants	374	262
Petition of Sweet *et al.* to be made complainants	378	264
Depositions taken before Robert H. Buck, master, &c.	386	268
Evidence for defendants	387	269
Testimony of Louis D. Schoenburg	387	269
Evidence for complainants	390	271
Testimony of Samuel L. Walker	390	271
Evidence for defendants	395	274
Testimony of J. H. Korty	395	274
Master's certificate	400	277
Petition of Brown *et al.* to be made complainants	401	278
Petition of Metcalf to be made complainant	404	280
Petition of Nathan to be made complainant	408	282
Petition of Adams to be made complainant	410	284
Master's report	412	285
Order of reference	413	285
Subpœna	414	286
Testimony of Asher Heller	416	287
Isadore Heller	422	292
Ed. Nathan	427	295
Samuel Rich	429	296
Alva Adams	433	299
Samuel Rich	438	302
Ed. Nathan	444	306
Mrs. Rachael Nathan	446	307
Exhibit D—Promissory note of Rich and Nathan to Mrs. H. Metcalfe, November 25, 1886	450	310
Notice to take testimony, &c.	450	310
Testimony of Samuel Rich	453	311
Exhibit A—Transcript of judgment in case of Frankenthal *et al.* *vs.* Rich	456	313
A (Claimants')—Assignment of Nathaniel Nathan to Alva Adams, November 5, 1888	459	315
B (Claimants')—Promissory note of Sam. Rich to Ed. Nathan, December 31, 1885	459	315
C (Claimants')—Check of Meyer and Nathan to Ed. Nathan, June 13, 1883	459	315
D (Claimants')—Promissory note of Rich and Nathan to Mrs. H. Metcalfe, November 25, 1886	460	316
A—Transcript of judgment in Sweet *et al. vs.* Rich, &c.	460	316

	Original.	Print.
Exhibit B—Assignment from Stein & Co. to Sweet, Dempster & Co., October 13, 1888	467	320
A—Transcript of judgment in Farwell & Co. *vs.* Rich, &c.	472	323
C—Assignment from Farwell & Co. to Sweet, Dempster & Co., October 23, 1888	474	324
Transcript of judgment in Farwell & Co. *vs.* Rich, &c.	476	326
A—Account of Dunlap, Lawton & Hall	480	328
D—Assignment from Dunlap, Lawton & Hall, October 23, 1888	481	329
Transcript of judgment in Dunlap *et al. vs.* Rich	483	330
E—Account of Eisman & Co.	488	333
F—Assignment of Kitzinger, Tuholske & Frohlichstein	489	334
Findings of the master	489	334
Stipulation to take depositions	498	334
Interrogatories to J. H. Monheimer *et al.*	499	341
Deposition of Jonas H. Monheimer	504	344
Marcus H. Monheimer	509	346
Petition of Cahn *et al.* to be made complainants	515	349
Affidavit of D. C. Lyles	519	352
Transcript in Cahn *et al. vs.* Rich	521	353
Affidavit in attachment	522	354
Bond for costs	523	354
Undertaking on attachment	524	355
Writ of attachment	526	356
Garnishee writ and interrogatories	528	357
Complaint	532	359
Summons	533	360
Order of default, &c.	535	361
Order extending time to answer	537	362
Judge's and clerk's certificate	537	362
Order granting leave to Cahn *et al.* to file petition	538	362
Petition of Heineman to be made complainant	540	364
Order extending time to file exceptions to master's report	543	366
Order on master to file supplemental report, &c.	544	366
Defendants' exceptions to master's report	544	367
Master's supplemental report	555	373
Exhibit 1—Judgment in Brown *et al. vs.* Rich	557	374
Final decree	560	377
Appeal bond	564	378
Notice of appearance in the Supreme Court of the United States	568	381
Clerk's certificate	569	381

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 6th day of May, A. D. 1887, came Daniel K. Tenney, by W. S. Decker, Esq., his solicitor, and filed in said court his bill of complaint and sued out of and under the seal of said court a subpœna in chancery against Samuel Rich, David May, and Adolph Hirsch.

And the said bill is in words and figures as follows, to wit:

Bill of Complaint.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court in and for said District.

To the honorable the judges of the circuit court of the United States for the district of Colorado, in chancery sitting:

Your orator, Daniel K. Tenney, who is a citizen of the State of Illinois, brings this bill of complaint against Samuel Rich, David May, and Adolph Hirsch, who are citizens of the State of Colorado; and thereupon your orator, complaining, says—

That heretofore, on the 25th day of April, 1887, by the
2 consideration and judgment of this court at law, your orator recovered judgment against the defendant Samuel Rich for the sum of thirteen thousand six hundred and sixty-five dollars, besides costs, which damages your orator had sustained by reason of the non-performance of certain promises and undertakings made by said defendant.

And your orator further shows that on the 26th day of April, 1887, for the purpose of obtaining satisfaction of said judgment, he sued out of the said court an execution directed to the marshal of said district, by which the said marshal was commanded that of the property of said defendant Samuel Rich within said district he should cause to be made the damages and costs aforesaid.

And your orator further shows that said marshal thereafter, to wit, on the 27th day of April, 1887, returned upon said writ that the said defendant Rich had no property in said district whereon to levy to satisfy the same or any part thereof, as by the said writ and the return of the marshal thereon, now on file in the office of the clerk of this court, to which your orator prays leave to refer, will more fully appear.

And your orator further shows that there is now actually and equitably due to your orator upon the judgment aforesaid the sum of thirteen thousand six hundred and sixty-five dollars, besides the costs, together with interest thereon from the 25th day of April, 1887, over and above any claim of said defendants against the same by way of offsets or otherwise.

And your orator further says that the defendant Samuel Rich, on the 24th day of March and for a long time prior thereto, had been doing business in Leadville, in said district, as a clothing
3 merchant, and that the indebtedness for which the judgment aforesaid was rendered was contracted by him for goods, wares, and merchandise sold and delivered to him and money loaned and advanced by the firms and persons as hereinafter mentioned—that is to say, that Leopold Brothers & Co., a copartnership doing business in the city of Chicago and State of Illinois, did sell and deliver during the month of February, 1887, goods, wares, and merchandise to the said Samuel Rich at the agreed price and value of nine hundred and ninety-five dollars and seventy-five cents; that Packard, McDonald & Bliss, a copartnership doing business in the city of Chicago and State of Illinois, did sell and deliver during the said month of February, 1887, to the said Samuel Rich goods, wares, merchandise, and clothing of the agreed price and value of seventeen hundred and seventy dollars and fifteen cents; that Meyers, Engel & Co., a copartnership doing business in the city of Chicago and State of Illinois, did sell and deliver to the said Samuel Rich during the month of February, 1887, goods, wares, merchandise, and clothing of the agreed price and value of five thousand two hundred dollars; that Henry Leiberman & Co., a copartnership doing business in the city of Chicago and State of Illinois, did sell and deliver to the said Samuel Rich during the month of February, 1887, goods, wares, merchandise, and clothing of the agreed price and value of twenty-eight hundred dollars; that H. Swisky, who was doing business in the city of Chicago and State of Illinois, did sell and deliver during the month of February, 1887, to the said Samuel Rich goods, wares, and merchandise of the agreed price and value of six hundred and fifty dollars; that Simon Hirsch & Co., a copartnership doing business in Kansas City, State of Mis-
4 souri, did loan and advance during the said month of February, 1887, to the said Samuel Rich the sum of one thousand dollars in money; that Ross Rich, residing in the city of Leadville, State of Colorado, did loan and advance during the month of June, 1886, to the said Samuel Rich the sum of seven hundred and fifty dollars in money; that Jacob Rich, residing in Leadville, State of Colorado, did loan and advance between the — day of ——, 1886, and the — day of ——, 188–, to the said Samuel Rich the sum of five hundred dollars.

And your orator says that the said Samuel Rich has not paid any part of the amount due for said goods, wares, and merchandise or the money loaned and advanced as aforesaid.

And your orator further says that the above-mentioned firms and persons, from whom the said Samuel Rich purchased goods and to whom he is indebted as aforesaid for money loaned and advanced, agreed among themselves and with the said Samuel Rich and your orator that he, the said Samuel Rich, should make and execute his said promissory note to your orator, as trustee for the said above-mentioned creditors, covering all of the said indebtedness due to the said several firms and persons, and that the said aggregate sum

of the said several amounts as aforesaid mentioned, to wit, the sum of thirteen thousand six hundred and sixty-five dollars, should become due and owing from the said Samuel Rich to your orator as trustee for said creditors.

And your orator further says that in pursuance of said agreement the said Samuel Rich did on, to wit, the 25th day of April, 1887, make, execute, and deliver to your orator his said promissory note for the said sum of thirteen thousand six hundred and sixty-five dollars; which said promissory note was and is in words and figures following, to wit:

5 "$13,665.00. DENVER, COLORADO, *April 25th*, 1887.

On demand I promise to pay to the order of D. K. Tenney, as trustee, thirteen thousand six hundred and sixty-five dollars, value received, with interest, at the rate of 8 per cent. per annum, from date until paid."

(Signed) SAM. RICH.

And your orator further says that the said Samuel Rich did on the said 25th day of April, 1887, confess judgment on the said promissory note to your orator for said sum of thirteen thousand six hundred and sixty-five dollars as hereinbefore stated.

And your orator further says that the said Samuel Rich from the first day of January, 1886, to the 1st day of February, 1887, was doing business in Leadville as a clothing merchant, and that for some time previous to the date last aforesaid the said Samuel Rich was indebted to divers and sundry persons to the amount of about thirty thousand dollars, and had assets, consisting of stock of merchandise on hand, of the nominal value of about forty-eight thousand dollars; that the said indebtedness or a greater part thereof was overdue, and that the said Samuel Rich was unable to meet the same as it matured and was thereby insolvent.

And your orator further says that the said defendant Rich, being thus insolvent and being greatly embarrassed because of his inability to pay his debts as they became due, applied to the defendants David May and Adolph Hirsch for counsel and assistance in regard to his said affairs; that said May and Hirsch told the defendant Rich that he was insolvent and could not pay his debts and suggested to him that he should make some disposition of
6 his property, with reference to a settlement with his creditors upon a basis of compromise; said defendant Rich, however, being of opinion that he was not really insolvent, but could pay his indebtedness upon sufficient time being granted for that purpose, declined to make any such disposition of his property, but determined to secure an extension of time of payment of his indebtedness from his creditors, and accordingly an extension of his liabilities was negotiated with his creditors, running from four months to two years; that soon after said extension was effected the defendants May and Hirsch, still believing that the said Rich would be unable to pay his debts and would ultimately have to close out and fail, conceived the idea, under the guise of friendship

for said Rich, to put themselves in a position whereby they could acquire the stock of goods and assets of said Rich at a very small price for their own advantage and benefit, and especially for the advantage of said David May, who was also a clothing merchant at Leadville in competition with the defendant Rich.

And your orator further says that in pursuance of this idea and plan the said May and Hirsch from time to time, under the guise of friendship, prevailed upon the defendant Rich to believe and he did come to believe that he would be unable to pay his debts, and that he must sooner or later fail. Having come to that conclusion, it was agreed between the said Rich and the defendants May & Hirsch that they should endorse for him from time to time, at the bank at which they were doing business, for such moneys as he would need to pay his maturing indebtedness, until such time as he would be able to go to Chicago and other markets to purchase upon credit an additional stock of goods to the amount of thirty
or thirty-five thousand dollars, and that when he should
7 have so purchased the same he should give the defendants May and Hirsch a prior lien thereon; that they should thereupon seize the stock of goods and dispose of the same at public auction by a speedy sale and assist him in making a settlement with the creditors to whom he was already owing and to whom he should become indebted by reason of making such purchases, in making a compromise of such indebtedness at the rate of twenty-five cents on the dollar or thereabouts; that in pursuance of said agreement and understanding the defendant Rich ordered from traveling salesmen from time to time during the months of January and February, 1887, such goods as they were selling, and in the month of February he went to Chicago and New York and purchased as many goods as he was able to obtain credit for, amounting in value to about sixteen thousand dollars, being far less than it had been agreed between the said Rich and the said May and Hirsch that he should buy, he failing to make the intended large purchases for the reason that the persons to whom he applied for the purchase of goods were in doubt as to his good credit; that immediately upon the return of said Rich from the East the defendants May and Hirsch severely rebuked and reproved the said Rich for not having purchased as many goods as they had directed him to do and as it had been understood between them that he would do, and upon the very day of his return to Leadville they insisted that he should give them a chattel mortgage upon his stock of goods, being all his property, to secure them for the indebtedness which they had endorsed for him at the Carbonate bank at Leadville, and also for an indebtedness of six thousand two hundred dollars due to said bank, which they claimed to have purchased, the whole amount being about eighteen thousand four hundred dollars. Said defendant Rich, being himself disappointed
8 in the amount of goods he had been able to purchase, was not inclined to prefer the claims of the defendants May and Hirsch, but upon being approached by them proposed to make an assignment for the common benefit of his creditors; said defendants May & Hirsch, however, by persistent effort and by promises that

they would care for and protect the interests of the defendant, induced him to give and he did give a chattel mortgage on all of his property to secure the amount of eighteen thousand four hundred dollars aforesaid, they agreeing that they would take possession of the stock immediately, sell it out, bid it in, and restore him to the possession and control of it within a short period, to be disposed of by the defendant Rich in the ordinary course of business, in their names, first reimbursing them for the amount of their claims aforesaid and thereafter for his own benefit, and that they would in the meantime endeavor to negotiate a settlement with the creditors of said Rich at about twenty-five cents on the dollar, which, by the disposition of said stock, he would be able readily to meet and leave him, the said Rich, a very handsome surplus.

Your orator further says that this scheme hereinbefore outlined was discussed from time to time between the defendant Rich and the defendants May and Hirsch for several months, and was agreed upon, the understanding being that he was to swindle and defraud the firms and persons hereinbefore mentioned who had sold to him, the said Rich, goods, wares, and merchandise or had loaned and advanced money to him and all the other of his creditors for the benefit first of the defendants May and Hirsch, and secondly for the benefit of the defendant Rich; and under and by virtue of the mortgage which the defendant Rich gave to the defendants May and Hirsch they, the said May and Hirsch, took possession of said stock of
9 goods at Leadville, amounting in value to forty-eight thousand dollars, advertised the same for sale, and the defendant David May caused the same to be bid in and purchased at the sale for his own advantage for the sum of twenty thousand one hundred dollars, and he now has possession of the same and of the proceeds thereof.

And your orator avers that by reason of the facts aforesaid and the frauds, conspiracies, and machinations involved as stated said chattel mortgage and said sale and all the agreements and contrivances leading up to the same were fraudulent and conceived and concocted with a view of deceiving, cheating, hindering, delaying, and defrauding the creditors of the said Rich.

And your orator further says that at the time of the execution of the chattel mortgage aforesaid the defendant Rich was indebted to the amount of about forty-five thousand dollars and upwards; that his total assets consisted of his stock of goods of about forty-eight thousand dollars, nominal value; that it became and was necessary for him to suspend payment of his indebtedness, being insolvent, and thereupon it was his duty to have made an assignment for the equal benefit of his creditors and so he proposed to the defendants May and Hirsch, but by reason of their pursuasions and promises aforesaid he gave the chattel mortgage aforesaid instead; that said chattel mortgage was a full and complete disposition of all the property of the said defendant Rich in view of the insolvency, which was well known to the mortgagees.

And your orator claims and insists that the said mortgage constitutes in law an assignment for the benefit of creditors, giving prefer-

ence to the claims of the mortgagees, and that the same, being
10 preferential, is void as to your orator and all other of the creditors of Samuel Rich.

All of which actings, doings, and pretenses on the part of said defendants are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises. In consideration thereof and forasmuch as your orator is remediless in the premises at and by the direct and strict rules of common law and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable, to the end, therefore, that the defendants may answer all the allegations of this bill—their answer under oath being expressly waived—as fully and particularly in regard to all the said allegations as if the same were each again repeated and they thereto distinctly interrogated, paragraph by paragraph, and especially that they may fully set forth and discover, according to the best of their several and respective knowledge and remembrance, information and belief, every fact and circumstance connected with the allegations hereinbefore made; that the defendant Rich may be decreed to pay to your orator the amount so as aforesaid due him for principal and interest on said judgment, together with your orator's costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or in equity, debts, choses in action, or equitable interests belonging to him or held in trust for him or in which he is in any way or manner beneficially interested; that the chattel mortgage aforesaid executed by the defendant Samuel Rich to the defendants David May and Adolph Hirsch may be declared fraudulent and void; that they may be decreed to pay into the court for the plaintiff and your orator the value of the stock of goods so as aforesaid by them fraudulently
11 obtained under said mortgage, to wit, the sum of forty-eight thousand dollars; that a receiver be appointed according to the course of practice in this court and with the usual powers of receivers in like cases of all the property, equitable interests, things in action, and effects of the said defendant Rich, and that your orator may have such further or such other relief in the premises as the nature of their case shall require and as shall be agreeable to equity and good conscience—

May it please the court to grant unto your orators a writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Samuel Rich, David May, and Adolph Hirsch, thereby commanding them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court to answer the premises, and to stand to, abide by, and perform such order and decree therein as to the court shall seem proper and as shall be agreeable to equity and good conscience.

(Signed) DANIEL K. TENNEY,
By W. S. DECKER,
His Solicitor.

(S'g'd) W. S. DECKER,
Solicitor for Complainant.

(Endorsed:) 2149. U. S. circuit court. Daniel K. Tenney, plaintiff, *vs.* Sam. Rich, David May, and Adolph Hirsch, def'ts. Bill of complaint. Filed May 6, 1887. (Signed) Edward F. Bishop, clerk. W. S. Decker, solicitor for plaintiff.

12 (Note by clerk:) Subpœna not returned.

And afterwards and on, to wit, the 28th day of June, A. D. 1887, came the said defendants, David May and Adolph Hirsch, by Thompson & Sayer, Esqrs., their attorneys, and filed in said court and in said cause their answer to the bill of complaint heretofore filed herein.

And the said answer is in words and figures as follows, to wit:

Answer of May and Hirsch.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY, Complainant,
vs.
SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH, Defendants.

The joint and several answer of David May and Adolph Hirsch, the defendants, to the bill of complaint of Daniel K. Tenney, complainant.

These defendants, now and at all times hereafter, saving and
13 reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such part thereof as these defendants are advised are or may be necessary for them to make answer unto, these defendants, answering, say—

That they do not know and never have been informed, save by the said complainant's said bill of complaint, whether on the 25th day of April, 1887, or at any other time, by the consideration and judgment of this court, at law or otherwise, the said complainant recovered judgment against the defendant Samuel Rich for the sum mentioned in said bill of complaint or for any sum, or whether the damages for which any such alleged demand was recovered were sustained by the complainant by reason of the non-performance of any promises or undertakings made by said defendant, or whether any damages of any kind had been sustained by said complainant, and leave the complainant to make such proof thereof as he shall be advised is material.

These defendants further say that they cannot set forth, as to their belief or otherwise, whether on the 26th day of April, A. D. 1887, or at any other time said complainant sued out of said court any

execution directed to the marshal of said district, by which the said marshal was commanded that of the property of said defendant, Samuel Rich, within said district he should cause to be made the alleged damages and costs aforesaid.

And these defendants, further answering, say that it may be true, for anything these defendants know to the contrary, that said marshal thereafter, as alleged in said bill of complaint, returned upon said writ that the said defendant Rich had no property in said district whereon to levy the same or any part thereof, but these defendants are utter strangers to all and every such matters and can form no belief concerning the same.

And these defendants, further answering, say that they do not know and have never been informed, save by said complainant's said bill, whether there is now actually and equitably due to said complainant, upon the alleged demand aforesaid, the sum of thirteen thousand six hundred and sixty-five dollars, besides the costs and interest, as alleged in said bill of complaint, or any other sum of money whatsoever, and leave the complainant to make such proof thereof as he shall be advised is material.

These defendants admit that the defendant Samuel Rich, on the 24th day of March and for a long time prior thereto, had been doing business in Leadville, in said district, as a clothing merchant, but they cannot set forth, as to their belief or otherwise, whether the indebtedness for which the said alleged judgment was rendered was contracted by him for goods, wares, and merchandise sold or delivered to him or money loaned or advanced by the firms or persons mentioned in said bill of complaint or any of them or any other firms or persons whatsoever, or whether Leopold Brothers & Company were a copartnership doing business in the city of Chicago, in the State of Illinois, or elsewhere, or whether said Leopold Brothers & Company ever sold or delivered goods, wares, or merchandise to the said Samuel Rich at any price or any agreed price or value or at all, or whether Packard, McDonald & Bliss were copartners doing business in the city of Chicago, in the State of Illinois, or elsewhere, or whether said Packard, McDonald and Bliss ever sold to said Samuel Rich goods, wares, merchandise, or clothing of any price or value or upon any agreed price or value whatsoever or at all, or whether Meyers, Engle & Co. were copartners doing business in the city of Chicago, in the State of Illinois, or elsewhere, or whether said Meyers, Engle & Co. ever sold or delivered to the said Samuel Rich any goods, wares, merchandise, or clothing of any price or value, or of any agreed price or value whatsoever or at all, or whether Henry Leiberman & Company were a copartnership doing business in the city of Chicago, in the State of Illinois, or whether said Henry Leiberman & Company ever sold or delivered to said Samuel Rich any goods, wares, merchandise, or clothing of any value whatsoever or at any agreed price or value whatsoever or at all, or whether H. Swisky was doing business in the city of Chicago, in the State of Illinois, or elsewhere, or whether said H. Swisky ever sold or delivered to the said Samuel Rich any goods, wares, or merchandise of any value whatsoever, or

at any agreed price or value whatsoever, or at all, or whether Samuel Hirsh & Co. were a copartnership doing business in Kansas City, in the State of Missouri, or elsewhere, or whether said Simon Hirsch and Company ever loaned or advanced to the said Samuel Rich the sum of one thousand dollars or any other sum whatsoever, or whether Rosa Rich ever loaned or advanced to the said Samuel Rich the sum of seven hundred and fifty dollars in money or any other sum whatsoever, or whether John Rich ever loaned or advanced to the said Samuel Rich the sum of five hundred dollars or any other sum whatsoever, or whether the said Samuel Rich has or has not paid the amount so as aforesaid alleged to be due for said goods, wares, and merchandise, or said moneys so as aforesaid alleged to have been loaned and advanced, and leaves the complainant to make such proof thereof as he is advised is material.

16 And these defendants say that they do not know and have never been informed, save by the said complainant's said bill of complaint, whether the alleged firms and persons aforesaid, from whom, as is alleged in said bill, the said Samuel Rich purchased goods, and to whom, it is so as aforesaid alleged, that he is indebted for money loaned and advanced, agreed among themselves, and with the said Samuel Rich and the said complainant, or otherwise or at all, that the said Samuel Rich should make and execute his said promissory note to said complainant as trustee for the said above alleged creditors, or otherwise or at all, covering all or any of the said alleged indebtedness due to the said several alleged firms and persons, or whether the said aggregate sum of the said several alleged amounts as aforesaid should become due or owing from said Samuel Rich to said complainant as trustee for said Rich's creditors or otherwise, or whether in pursuance of said alleged agreement or at all, the said Samuel Rich did, on, to wit, the 25th day of April, A. D. 1887, or at any other time, make, execute, or deliver to said complainant his promissory note for the said sum or any promissory note for any sum, or whether said alleged promissory note was or is in the words and figures set forth in said bill or in any words or figures whatsoever, or whether the said Samuel Rich, on the 25th day of April, 1887, or at any other time, confessed judgment on the said alleged promissory note for the sum mentioned in said bill or any other sum, and leave the complainant to make such proof thereof and of all such matters and things as he may be advised is material.

These defendants admit that the said Samuel Rich, on the 21st day of February, 1887, and prior thereto, was doing business in Leadville as a clothing merchant; but they do not know and

17 have never been informed, save by said complainant's said bill, whether at that date or for some time previous thereto the said Samuel Rich was indebted to divers and sundry persons to the amount of about thirty thousand dollars or any other sum, except the indebtedness hereinafter mentioned, for which these defendants became liable, and leave the complainant to make such proof thereof as he is advised is material.

But these defendants deny that said Samuel Rich had assets consisting of a stock of merchandise on hand of the nominal or other value of about forty-eight thousand dollars.

And they say that they do not know and have never been informed, save by said complainant's said bill, whether said alleged indebtedness or any part thereof was overdue, or whether the said Samuel Rich was able or unable to meet the same as it matured, or whether he was thereby or otherwise insolvent, and leave the complainant to make such proof thereof as he is advised is material.

These defendants deny that the said defendant, Samuel Rich, ever applied to them or either of them for counsel or advise in regard to his affairs or any of them in connection with any insolvency or inability to pay the indebtedness of the said Rich, and they deny that they or either of them ever told the defendant Rich that he was insolvent or could not pay his debts, or suggested to him that he should make some or any disposition of his property, with reference to any settlement with any creditors of him, the said Rich, upon any basis or compromise or otherwise, and they deny that they ever had any conversation with the said Rich or made any suggestion whatsoever to him with reference to any such matters.

18 These defendants cannot set forth, as to their belief or otherwise, what the opinion of the said Rich was as to his insolvency or his inability to pay his debts, or as to whether said Rich negotiated any extension with his alleged creditors for any time, but they deny that they or either of them ever conceived any idea, under the guise of friendship or otherwise, for said Rich to put themselves in any position whereby they could acquire the stock of goods and assets of said Rich or any part thereof at a very small price or at any price for their own advantage or benefit, or for any other purpose, or with any other motive, or at all, or for the advantage of the said David May.

They deny that, in pursuance of any idea or plan, or at all, said May and Hirsh or either of them, under the guise of friendship or otherwise, or at all, prevailed upon the said Rich, or endeavored to prevail upon the said Rich, or intimated or hinted to the said Rich, that he would be unable to pay his debts, or that he would, sooner or later, fail.

As to whether the said Rich ever came to believe that he would be unable to pay his debts, or that he would, sooner or later, fail, these defendants do not know and have never been informed, save by said complainant's said bill, and leave complainant to make such proof thereof as he is advised is material.

But these defendants deny that it was ever agreed between the said Rich and them or either of them that they should indorse for him from time to time, at the bank at which they were doing business, for such moneys as he would need to pay his matured indebtedness until such time as he should be able to go to Chicago or other markets to purchase on credit an additional stock of goods to

19 the amount of thirty or thirty-five thousand dollars or any

other sum, or that, when he should have purchased the same, *that* he should give said May and Hirsch or either of them a prior lien thereon, or that they should thereupon seize the stock of goods or dispose of the same at public auction by speedy or other sale, or assist him, the said Rich, in making any settlement with the creditors to whom he was already owing or to whom he should become indebted by making such purchases or making any compromise of such indebtedness at the rate of twenty-five cents on a dollar or any other sum.

These defendants deny that in pursuance of any such alleged agreement or any agreement or understanding the defendant Rich ordered from travelling salesmen or any other person or persons at any time any goods or ever went to Chicago or New York or elsewhere and purchased any goods whatsoever. They deny that they or either of them, immediately on the return of said Rich from the East or at any other time, severely or at all rebuked or reproved the said Rich for not having purchased the said goods as they had instructed him to do, or for not having purchased goods in any amount, and they deny that they ever rebuked or reproved him at all. They deny that it had ever been understood between them or either of them that the said Rich should purchase any goods whatsoever.

They admit that on the day of his return to Leadville or soon thereafter they insisted that he should give them a chattel mortgage upon his stock of goods to secure them for the indebtedness which they had indorsed for him at the Carbonate Bank of Leadville and the payment of which they had assumed; but they deny that said stock of goods was all of his property, and they say that they so insisisted that said Rich should give them a chattel mortgage for the purpose of securing them against loss by reason of the liability incurred by them in his behalf, as hereinafter set forth, and not otherwise.

These defendants deny that said defendant Rich ever proposed to them to make an assignment for the common benefit of his creditors, and they deny that they or either of them ever, by persistent effort or by any effort or by any promises that they would care for or protect any interests of the defendant Rich, induced him to give the chattel mortgage mentioned in said bill, and they deny that they ever agreed that after having taken possession of the stock and sold it out they would restore him to the possession or control of it within a short period or at all, to be disposed of by him in the ordinary course of business or in any manner whatsoever. They deny that they or either of them ever agreed to bid in said stock of goods, or that any agreement was ever made with said defendant Rich whereby the business was to be done by him in their names or any reimbursements made to them for the amount of their claims or for any claims, or that said defendant Rich should in any manner or at any time dispose of said stock or any part thereof for his own benefit, or that these defendants would at any time endeavor to negotiate a settlement with the creditors of said Rich at about

twenty-five cents or any other sum on the dollar or at any rate whatsoever.

They deny that they ever made any agreement with the said Rich concerning the disposition of said stock whereby he would be able to meet any claims of any creditors of him, the said Rich, or leave him, the said Rich, any surplus whatsoever.

These defendants deny that any scheme, as alleged in said
21 bill, was discussed from time to time or ever or at all between the defendant Rich and these defendants or either of them or was ever agreed upon, and they deny that there ever was any understanding between them or amongst them in any manner whatsoever that said Rich was to swindle or defraud the firms and persons hereinbefore mentioned or any firms or persons whomsoever or any creditors of said Rich, either for the benefit of the defendants May and Hirsch or either of them, or for the benefit of the defendant Rich, or for the benefit of any persons or person or at all.

These defendants admit that under and by virtue of the mortgage which the defendant Rich gave to them they took possession of said stock of goods at Leadville and advertised the same for sale, but they deny that the same amounted in value to forty-eight thousand dollars, and deny that the said David May caused the same to be bid in or purchased at the sale for his own advantage, and deny that he now has or had at any time since said sale possession of the same or of the proceeds thereof except the sum for which the same were bid off and sold at said sale.

These defendants deny that said chattel mortgage or said sale or any agreement or agreements leading up to the same were involved in any frauds, conspiracies, or machinations, and deny that there were on their part or the part of either of them any contrivances leading up to the same, or that any part of the transaction which resulted in said chattel mortgage and the possession and sale of the said stock of goods thereunder was fraudulent or conceived or concocted with a view of swindling, cheating, delaying, or defrauding the creditors of said Rich or any other person or persons whomsoever.

And these defendants further say that they do not know
22 and have never been informed, save by the said complainant's said bill, whether at the time of the execution of the chattel mortgage the defendant Rich was indebted to the amount of about forty-five thousand dollars or upwards, or as to what the amount of the indebtedness of the said Rich was at that time, or whether it became or was necessary for him to suspend payment of his indebtedness, or whether he was insolvent, and leave the complainant to make such proof thereof as he is advised is material, but they deny that his total assets consisted of his said stock of goods and deny that said stock of goods was worth about forty-eight thousand dollars or any other sum exceeding the sum of twenty-three thousand dollars, nominal value, and deny that it was his duty to have made an assignment for the equal benefit of his creditors, and deny that he so proposed to these defendants or either of them, and deny that by reason of any promises of these defendants or either of them he gave

the chattel mortgage aforesaid. They deny that said chattel mortgage was a full or complete disposition of all the property of said defendant Rich, or that so far as these defendants or either of them is concerned it was made in view of any insolvency of the said Rich, or that such insolvency was well or at all known to them or either of them.

These defendant- deny that said mortgage constituted in law an assignment for the benefit of creditors giving a preference to the claims of the mortgagees, and deny that the same is for any reason void as to the complainant or as to any of the creditors of Samuel Rich or as to any person or persons whomsoever.

And these defendants, further answering, say that on the 24th day of March, A. D. 1887, and prior thereto, the defendant Samuel Rich was indebted to the Carbonate Bank of Leadville, Colo-
23 rado, in the sum of about eighteen thousand four hundred dollars, with interest thereon; that these defendants became legally liable, by indorsement, suretyship, and otherwise, for the whole amount of said indebtedness; that said interest was long past due, and the said The Carbonate Bank of Leadville was threatening to commence suit against these defendants to recover from them the amount for which they as aforesaid became liable, being the amount of said indebtedness, with said interest; that to avoid such legal proceedings as were then threatened as aforesaid and to protect themselves from loss by reason of the aforesaid liability incurred by them in relation to said indebtedness, these defendants, on said 24th day of March, made an agreement with the defendant Samuel Rich and with the said The Carbonate Bank of Leadville, whereby these defendants were to pay said indebtedness to said The Carbonate bank in full, and the said Rich should execute to them a chattel mortgage upon the stock of goods hereinbefore mentioned, and should by the terms of said chattel mortgage place them in possession of said goods, they to sell the same at public or private sale, as they might deem best, and apply the proceeds thereof, first, to the discharge of said indebtedness so as aforesaid paid by them, and the residue thereof to be turned over and be delivered to said Rich; that these defendants thereupon paid said indebtedness in full.

That in pursuance of said agreement said Samuel Rich did on said day execute and deliver to them his certain chattel mortgage, whereby he granted, bargained, sold, and conveyed to them the stock of goods aforesaid to secure to them the payment of the aforesaid sum and said interest, and that it was provided in said chattel mortgage that these defendants should take the immediate
24 possession of all the said goods and chattels and of the room in which they were contained, and should proceed to sell and dispose of the same with reasonable diligence, at public or private sale, as they might deem best, and out of the proceeds of such sale of goods and chattels pay the amount due on said notes and interest thereon and the costs and expenses of such sale, rendering the surplus, if any, to the said Samuel Rich, his executors, administrators, or assigns; and it was further provided in said chattel mort-

gage that if the said Samuel Rich should, at any time before a sufficient quantity of said goods and chattels should be sold to realize a sum sufficient to pay said amount due and said expenses, pay to the said David May and A. Hirsch or their assigns the amount due on said notes or the balance which might be due thereon after deducting the net amount realized from said sale, then the chattel mortgage should be void and the residue of said goods remaining unsold should be delivered to said Samuel Rich and the possession thereof restored to him.

That in pursuance of the terms and conditions of said chattel mortgage these defendants did thereupon immediately enter into possession of said stock of goods, being the goods and chattels mentioned in said chattel mortgage, and, after having sold a small portion of the same at private sale, advertised the residue thereof at public auction, by ten days' publication of a notice of such sale in a daily newspaper published in the city of Leadville, in the county of Lake and State of Colorado, and also by posting up notices of such sale on the front door of the store-room in which said goods and chattels were contained.

That said chattel mortgage was, on the 25th day of March, A.
25 D. 1887, duly recorded in the office of the clerk and recorder of said Lake county, Colorado.

That in pursuance of the notices of sale aforesaid said goods and chattels were, on the days named in said notices, duly exposed for sale at public auction to the highest bidder for cash; that a large number of persons were present who desired to purchase said goods; that said persons had for a long time prior thereto full and free access to said goods for the purpose of examining the same and ascertaining their value; that a full and complete inventory of the same had been made by these defendants and the actual value thereof ascertained and placed in said inventory, which actual value as ascertained by said inventory was about 23,000 dollars.

That at said sale said goods and chattels were bid for and sold to the person bidding the highest price therefor, to wit, for the sum of twenty thousand one hundred dollars, and that said sum so bid was the fair actual value thereof at said place at said time.

That possession of said goods and chattels was thereupon immediately after such sale was made and the money paid therefor turned over to the purchasers thereof at said sale, and that since said time these defendants have had no further possession of or any interest in the same.

These defendants further say that they made the agreement aforesaid and obtained the chattel mortgage aforesaid and paid said indebtedness to said The Carbonate bank and took possession of said goods and chattels and sold them as aforesaid for the sole purpose of protecting themselves against loss with which they were threatened by reason of the aforesaid liabilities which they had in-
26 curred on behalf of the defendant Rich; that all the matters and things aforesaid were transacted and done by them in good faith for their own protection and without any intention on

their part in any way or manner to impair or interfere with the rights of any other person or persons whomsoever.

And these defendants deny all and all manner of unlawful combination and confederacy whereby they are in the said bill charged; without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained necessary for these defendants to make answer unto and not herein well and sufficiently answered, traversed, avoided, or denied, is not proved to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be dismissed with their reasonable costs and charges in this behalf sustained.

(Signed) THOMSON & SAYER AND
BISSELL & GUNNELL,
Attorneys for Defendants May & Hirsch.

STATE OF COLORADO, }
County of Lake, } ss:

David May, being first duly sworn, on oath deposes and says that he is one of the defendants named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein stated on information and belief, and as to those matters he verily believes it to be true.

(Signed) DAVID MAY.

27 Subscribed and sworn to before me this 24th day of June, A. D. 1887.

(Signed) GEO. S. PHELPS,
Judge of the County Court, Lake County, Colorado.

[Seal County Court, Lake County.]

(Endorsed:) 2149. Daniel K. Tenney *vs.* Samuel Rich *et al.* Joint & several answer of David May & A. Hirsch. Filed Jun-28, 1887. (Signed) William A. Willard, clerk. Thomson & Sayer and Bissell & Gunnell, att'ys for def'ts May & Hirsch.

And afterwards and on, to wit, the 27th day of July, 1887, came again the said complainant, by his solicitor aforesaid, and filed in said court and in said cause his replication to the answer of the defendants David May and Adolph Hirsch heretofore filed herein, and the said replication is in words and figures as follows, to wit:

Replication to Answer of May and Hirsch.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

28 DANIEL K. TENNEY, Complainant,
vs.
SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH, Defendants.

The replication of Daniel K. Tenney, complainant, to the answer of David May and Adolph Hirsch, defendants.

The repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable — shall direct, and humbly prays as in and by his said bill he has already prayed.

(Signed) W. S. DECKER,
Solicitor for Comp't.

(Endorsed:) 2149. In the circuit court. Daniel K. Tenney *vs.* Samuel Rich *et al.* Replication to answer of May and Hirsch. Filed Jul. 27, 1887. (Signed) William A. Willard, clerk. W. S. Decker, solicitor for complainant.

29 And afterwards and on, to wit, the second day of December, A. D. 1887, came Andrew W. Brazee, Esq., an examiner in chancery, and filed in said court and in said cause his report of the testimony of Nathan Lewis on behalf of complainant, and the said report is in words and figures as follows, to wit:

Testimony of Nathan Lewis for Complainant.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Be it remembered that on the 27th day of September, 1887, I, Andrew W. Brazee, a master and examiner in chancery of the United States circuit — for the district of Colorado, pursuant to the annexed order, notice, and certificate of service thereof, attended at the time and place mentioned in said order and notice, when and where the complainant therein mentioned appeared by W. S. Decker, Esq., his solicitor, and upon his motion the examination of

witnesses in the cause in said order mentioned was adjourned until Thursday, the 29th day of September, 1887, at ten o'clock a. m., to accommodate defendants' solicitors therein, as it was by him said.

That on the 29th day of September, at ten o'clock a. m., on like motion and like suggestion, such examination was further adjourned, on like motion and suggestion of complainant's solicitor, to the 7th day of October, 1887, at ten o'clock a. m. of that day.

October 7th, 1887, upon like motion and suggestion of complainant's solicitor, such examination was further adjourned to the 8th day of October, 1887, at ten o'clock in the forenoon.

At the time last mentioned the complainant appeared before me, at my said office, by W. S. Decker, Esq., his solicitor, and the defendants came then and there also by Charles I. Thompson,
30 their solicitor, and then and there also came Nathan Lewis, a witness on behalf of the complainant aforesaid, who, being duly cautioned and sworn that the testimony he should give in said suit and matter of controversy pending in the circuit court of the United States forthe district of Colorado, wherein Daniel K. Tenney is complainant and Daniel Rich and others are defendants, should be the truth, the whole truth, and nothing but the truth, in answer to oral interrogatories propounded by said solicitors did depose, testify, and say as follows, to wit:

Deposition of Mr. LEWIS NATHAN, a witness produced on the part of the plaintiff, who, being duly sworn according to law and orally interrogated, testified as follows, to wit:

Q. What is your name, age, occupation, and place of residence?

A. My name is Lewis Nathan; my age, twenty-five years; I am in the clothing business, and I reside on Larimer street, No. 1446, Denver, Colorado.

Q. Are you acquainted with Daniel K. Tenney, any of the members of the firm of Leopold Brothers and Company, David May and Adolph Hirsch; if so, which, if either?

A. Yes, sir; I am acquainted with both of them.

Q. Are you acquainted with all of them?

A. No, sir; I do not know Daniel Tenney.

Q. Are you acquainted with Leopold and Company?

A. I knew one of them, but he is now dead. The others I never knew. I am acquainted with David May and Adolph Hirsch.

Q. How long have you been acquainted with David May and Adolph Hirsch?

A. Four or five years.

31 Q. Do you know Samuel Rich?

A. Yes, sir.

Q. How long?

A. For eighteen years.

Q. In whose employ have you been, if in any one's, for three or four years before about the 24th of March, 1887?

A. Sam. Rich's.

Q. What was his business?

A. The clothing business.

Q. When did he stop doing business?

A. I do not know exactly.

Q. Who took possession of the store, if any one, when he quit business?

A. Adolph Hirsch and David May.

Q. Do you remember the time that Sam. Rich went East—the last time?

A. Yes; I remember when he went, but I do not know what time it was.

Q. Do you remember of hearing any conversation between either Adolph Hirsch or David May and Sam. Rich at any time before Sam. Rich went East?

A. Yes, sir; I have; between both of them.

Q. Where have you?

A. In the store.

Q. Whose store?

A. Samuel Rich's, on Harrison avenue, Leadville.

Q. Did you hear what was said by either David May or Adolph Hirsch in this conversation?

A. No, sir.

32 Q. Do you know of either Adolph Hirsch or David May visiting store of Sam. Rich during about a month or more previous to Rich going East in January or February?

A. Yes, sir.

Q. How often did either of them come to the store during the month previous?

A. One or two times. David May would send one of the boys over to the store to tell Sam. to come over every day or two. The way I know is I heard the boy inquire.

Q. Just before or two or three days before Sam. Rich went East, in February, 1887, how often did either of those men visit Sam. Rich's store?

A. Two or three times before he left.

Q. The day before Mr. Rich went East do you remember of David May being in the store?

A. Yes, sir.

Q. How often?

A. About three times.

Q. What was your business in the store of Sam. Rich?

A. Selling clothes.

Q. Did you have charge of the money that was taken in?

A. Yes, sir; during the day in taking it in.

Q. Who, if any one, would come and get the money that was taken in during the day?

A. Rudolph Ney would come and get the money every night about the time we closed up.

Q. Did he give you a memorandum?

A. Yes, sir.

33 Q. Do you know what he did with the money?

A. No, sir.

Q. During the time that Sam. Rich was East state what, if any,

inquiries were made at the store by Adolph Hirsh or David May about goods being received or bills of goods being received.

A. David May asked me if Hart Brothers' bill came in and I said "No;" and about some rubber goods from St. Louis I said, "I guess the goods are in the box outside."

Q. I will ask you if they came for the bill of goods that had been sent from different creditors?

A. Yes sir; Rudolph came and asked for the bills and I gave them to him, and he and I picked them out. They would take the bills of the goods that had come in and leave the others there.

Q. Would they bring the bills of these goods back again?

A. Yes, sir.

Q. Do you remember of a check drawn by Sam. Rich coming to the bank there to be paid?

A. Yes, sir; I took a check up to the bank and there was no money there.

Q. Who was it payable to?

A. To Sands, Pelton & Company. I then went up to Adolph Hirsch and he paid the money out of a sack.

Q. Do you remember the day that Sam Rich returned from the East?

A. Yes, sir.

Q. Did you know that he was coming?

A. Yes, sir.

Q. I will ask you to state who was at the store when he came.

A. Adolph Hirsch and David May.

Q. How long had he returned before David May and
34 Adolph Hirsch took possession of the stock of goods?

A. He came that morning and they took possession after we shut up that night.

Q. Did you continue in the store?

A. No, sir; I left the next morning.

Q. That was this last spring—March?

A. Yes, sir.

(Signed) LOUIS NATHAN.

Subscribed and sworn to before me this 8th day of October, 1887.

ANDREW W. BRAZEE,
Examiner in Chancery.

(Exhibit A), A. W. B.

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Daniel K. Tenney, Complainant,		
vs.		2149.
Daniel Rich, David May, and Adolph Hirsch, Defendants.		In Chancery.

To Messrs. Bissell and Gunnel and Thompson and Sayer, defendants' solicitors:

You will please to take notice that the above-named complainant desires the evidence to be adduced in said case to be taken under the sixty-seventh rule in equity of the Supreme Court, as amended.

35 You will further take notice that by an order made in said cause by Andrew W. Brazee, master and general examiner in chancery of said court, the examination of witnesses on the part of said complainant will take place before the said master and examiner at his office, 1540 Champa street, Denver, Colorado, Tuesday, September 27th, 1887, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, subject to adjournment from time to time.

Dated Sep. 17th, 1887.

(Signed) W. S. DECKER,
Solicitor for Complainant.

Ordered that the testimony of witnesses for the complainant in the foregoing cause mentioned may be taken before me, at my office, No. 1540 Champa street, Denver, Colorado, on Tuesday, September 27th, 1887, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, subject to adjournment from time to time until the evidence of complainant is completed before me.

Dated Sep. 17th, 1887.

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

I hereby certify that I served the foregoing notice and order on Bissell and Gunnell and also on Thompson and Sayer by enclosing a duplicate thereof in several envelopes, directed respectively to said firms at Leadville, Colorado, and delivering the same to a mail, carrier in the city of Denver, the postage thereon being prepaid by me by placing adhesive postage stamps on said envelopes re-

36 spectively for the full amount of the postage thereon, on September 17th, 1887, at 4.30 p. m.

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

I hereby certify that the foregoing is all the testimony taken before me as such examiner under and in pursuance of said notice and order hereto annexed and marked "Exhibit A;" that the examination of the witness whose deposition is hereto annexed was orally taken in the presence of the solicitors of the parties, who appeared, as aforesaid, and by their consent was taken down stenographically and afterward typewritten, and, after being so written out, thereafter was read over to said witness in the presence of the complainant's solicitor, the said defendants' solicitor expressly waiving his right to be present at the reading and signing thereof; that, after being read over to said witness, it was corrected, as the same appears opposite my initials "A. W. B." in the margin; that said witness, before being examined, was duly sworn according to law as a witness in said cause, and after signing said deposition to the truth of said deposition.

I further certify that the foregoing is a true statement of the proceedings before me in the matter of such examination, and that I have no interest, direct or indirect, in the event of said cause.

37 Dated October 14th, 1887.

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

(Endorsed:) 2149. United States circuit court. Daniel K. Tenney *vs.* Daniel Rich *et al.* Deposition of Nathan Lewis in behalf of complainant. Opened, published, and filed Dec. 2nd, 1887. (Signed) William A. Willard, clerk.

And afterwards and on the same day, to wit, the 2nd day of December, A. D. 1887, there *was* opened, published, and filed in said court and in said cause the depositions of Nathan H. Thorn, Samuel Rich, Rudolph Ney, T. J. Cash, M. Harris, Louis E. Brown, Charles Sands, Samuel Meyer, Samuel Berry, Fred. Butler, Edward Strauss, L. H. Johnson, Sol. Strauss, Jacob Schloss, David May, and Adolph Hirsch on behalf of complainants and defendants; and the said depositions are in words and figures as follows, to wit:

Depositions—Thorn et al., Behalf Complainant and Defendants.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, Sitting within and for said District.

38 DANIEL K. TENNEY *et al.*, Complainants, }
vs. } No. 2149.
SAM. RICH *et al.*, Defendants. }

Testimony of witnesses in the above-entitled cause, taken before Charles A. Hinckley, a notary public in and for the county of Lake and State of Colorado, commencing on the 25th day of October, A. D. 1887, and continued from day to day, at Leadville, Lake county, Colorado, pursuant to the stipulation hereto attached and made a part hereof.

The complainants being represented by W. S. Decker, Esq., and the defendants May and Hirsch by A. T. Gunnell and C. I. Thomson.

NATHAN H. THORN, a witness produced, sworn, and examined on the part of the complainants, testified as follows:

Examined in chief by W. S. DECKER:

Q. What is your full name, age, business, and residence?

A. Nathan H. Thorn; aged 41; business, cigars and tobacco; residence, Leadville, Lake county, Colorado.

Q. Are you acquainted with the complainants and defendants or either of them? If yea, state how long you have been acquainted with either.

A. I don't know the complainants, except Leopolds; I don't know them.

Q. Do you know these defendants, Samuel Rich, David May, and Adolph Hirsch?

A. Yes, sir.

39 Q. How long have you known them or either of them?

A. I have known all of these defendants ever since March, 1879.

Q. Was and is the defendant Samuel Rich indebted to you in any sum; if so, when was that indebtedness contracted, and how much is it, and for what?

A. I believe it is in March, something, 1886; $650, loaned in United States currency to Samuel Rich.

Q. Do you remember about what time Samuel Rich went East to purchase goods the last time?

A. It was some time, I believe, in January or February; I don't remember when; somewhere along the first part of the year; either January or February.

Q. Of this year?
A. Yes sir; 1887.
Q. Do you remember about what time he returned?
A. Yes, sir.
Q. State.
A. Well, just about—a little before Sam. Rich went East he made a second loan of me of two hundred dollars, in addition to this six hundred and fifty dollars.
Q. In money?
A. Yes, sir; cash money; and he returned somewhere in the latter part of March. Well, he owed me then about eight hundred and fifty dollars, and during his absence I found out—well, he returned about the latter part of March.
Q. Did you see him the day he returned?
A. I did not.
Q. How soon after his return did you see him?
A. I saw him the next day after his return.
40 Q. Did you have a conversation with him?
A. Well, the morning—I haven't got the date here—the morning he returned I just come to my place of business. As I unlocked the door Sam. Rich followed me in, and with that he called me to the side of the store and he said, Thorn ——

Objected to on the part of the defendants May and Hirsch, to the witnesses making statements of conversations between himself and Samuel Rich, for the reason that these defendants are not bound by whatever may have been said to the defendant by the witness or the witness to Samuel Rich.

Q. Now go on and state.
A. Sam. started out and said, I have transferred my business to Hirsch and May by an agreement between us three to settle all my affairs—my affairs for my own benefit straight out—to shut the eyes of all the creditors, and I gave a mortgage to them, which was only to blind the world, but things will be straightened up again inside of three or four days. Don't say anything; don't make any noise; your money will be paid to you; don't attach; say nothing, and everything will be straightened up again.
Q. Did Sam. Rich leave you then—leave your store?
A. I told Rich then, You protect me and my money; he says, It don't make any difference; it will be the same as before; I will be in there in two or three days and your bill will be paid; to show you what is right, I will give you two dundred dollars to-day.
Q. Was that all that took place, or the substance of it?
A. That was all that took place; I thought there was no
41 use talking; everything would be all right.
Q. Now, did you see Mr. Hirsch shortly after that; if so, about how long?
A. I saw Mr. Hirsch about two hours after that?
Q. Where?
A. At my store.
Q. Did you have a conversation with him?

A. I did.

Q. If so, state the conversation with Hirsch concerning this matter.

A. I spoke to Hirsch about two hours and a half later at my store, and I asked Hirsch about this matter last night. Well, Hirsch came into my place about the hour stated. I spoke to him about the affairs of Sam., and he said this change was made to blind the creditors; that Sam. would not go on any further, and we thought the best we could do was to make this change; and when I told him about my money he said, You need not fear; we will pay you the money. Says I, What do you mean? We will pay you, says he, either I or May, but don't attach and don't make any noise, because Sam. will be back again in the store inside of two or three days.

Q. What did he say with reference to Eastern creditors?

A. He said then, We don't propose to pay anything to the creditors, but will pay Sam.'s creditors here at home like this. Says I, That is all right. I won't attach and not make any trouble. He said, If Sam. goes back into the store and he feels like settling with these people here, he can do so.

Q. Did you meet him after that and talk with him about this matter of Rich's?

A. About ten or eleven days after that I met him at the
42 request of Judge Gunnell.

Q. State what that conversation with Hirsch at that time was.

A. After a lapse of nine or ten days from the morning of this conversation with Mr. Hirsch the thing has changed—a change from the promises made to Mr. Rich to return to the business. They have sold out this concern. Whatever took place between them I don't know. After Mr. Rich was thrown out of his business I thought then I will have to go and try——

Objected to.

A. I then went to Judge Gunnell and stated my case to him. I told the Judge that I was in six hundred and fifty dollars. I told the Judge I had spoken to Mr. Rich or Mr. Rich had come to me and told me all about it, as I said here. I also spoke to Hirsch two hours later, and gave the statement to the Judge as I do here now, and that I would like to have my money——

Q. I don't care about the conversation with Judge Gunnell. What time afterwards was the conversation with Hirsch?

A. I went to Mr. Hirsch after that and told him about the money he promised me that morning. He says, Do I owe you anything? I says, No. I says, Look here. You have got to talk sense. You don't owe me anything. I want you to fulfill your promise to me not to attach or make any trouble. He jumped again and said, Do I owe you anything? He said, You will get your money, every dollar of it, but don't attach. And these were the words that took place between us that morning.

Q. Was that all the conversation you had?

A. That was the last conversation with Mr. Hirsch.

Q. Did you at any time have any conversation with Mr. May in regard to the transfer of this stock of goods from Rich to May
43 and Hirsch?

A. I spoke to Mr. May in the same tone that I did to Mr. Hirsch. I will state what he told me. It was at the suggestion of Judge Gunnell I laid this case before them as I did before the Judge. He says, Lay it before them; talk to Hirsch and May. I said to May, So and so is the case; I know all about this and what has been done; I have six hundred and fifty dollars in there, and I want this money. He says, I don't know anything about it. I have this stock; that belongs to me. If you want this money you will have to attach. I says, I didn't come to advise; I want my money. I told him in plain language, You have robbed this man, and I want my money. He told me to go and attach and do the best I could. I retired, and that was all the conversation I had with him.

Q. These were the conversations you had with Hirsch and May, and that was all?

A. Yes, sir.

Q. I will ask you if two hundred dollars was paid to you.

A. Yes, sir; the morning of the change; two hundred dollars the morning when Sam. spoke to me. Sam. says, To show you I will do what is right I will give you two hundred dollars to-day. Sam. didn't get around until one or two o'clock, and I looked him up. I went up to his residence. I spoke to his wife, and she thought he was up to her brother's store.

Q. The defendant Hirsch?

A. Yes, sir; and there was Hirsch in front of the store. As Sam. saw me coming he met me half way, and we walked from there to his brother's place, and then — gave me two hundred dollars in gold.

44 Q. Did he go in Hirsch's store first?

A. When I came up there he was standing with Hirsch in front of the store.

Cross-examination by A. T. GUNNELL, Esq.:

Q. Sam. Rich paid you the two hundred dollars himself, did he?

A. Yes, sir.

Q. Now, when you spoke to me with reference to this matter I told you I could not advise, as I was the attorney for May and Hirsch?

A. Yes, sir.

Q. And told you if you wanted to, if those were the facts, you had better see Hirsch and May?

A. Yes, sir.

Q. It was pursuant to that you saw Hirsch and May?

A. Yes, sir.

Q. When was it this conversation occurred with Hirsch, and where?

A. The first conversation occurred the first morning of the deal at my store—the morning after the night.

Q. The morning after the night when you understood the deal had been made between Rich and May and Hirsch?

A. Yes, sir.

Q. That was at your store?

A. Yes, sir.

Q. When did the next conversation occur?

A. It was about two days after I had talked with you, which was a difference of eight days after the first conversation. Then I talked with you; then you told me to wait. Then I talked with you and told you what I was going to do, and you said, I
45 would wait until the morning, as Mr. Hirsch was absent, and was expected the next day. At your suggestion I waited.

Q. Then you had your first conversation with Hirsch prior to seeing me at all?

A. O, yes; that was a difference of about nine days.

Q. When did you have the second conversation?

A. The second conversation was after talking with you and at your suggestion to go and see these two gentlemen.

Q. It was not my request, was it? I said you might go and see them about it.

A. You thought the best I could do was to go and see these gentlemen separately and lay the case before them.

Q. Then you saw Hirsch after that?

A. I saw Hirsch and May and reported to you.

Q. When you saw Hirsch the second time what did you say to him and he to you?

A. I met Hirsch at the second time, as I said, at your request, and told him that I wanted my money according to the promise the first day after this change, and he said, Do I owe you anything? I said, No, you don't owe me anything, but you owe me this; that you told me the morning after the change was made in my store that you will get every cent coming to you, and don't make any noise, don't attach, your money will be paid to you. We don't propose to pay all creditors. We will pay you and everybody else all the indebtedness Sam. has contracted in town. I said, All right. He had his opinion and I had mine that Sam hadn't managed his affairs right, and that Sam. better do this.

Q. Isn't it true that at both of these conversations Hirsch
46 told you that he and May had taken a mortgage on Sam.'s stock of goods and taken possession of them, and after the debt—the mortgage—was paid that then you would get your money, as well as the balance of the creditors?

A. No, sir.

Q. Did Hirsch undertake to say to you that he, Dave May, or both of them would pay your debt out of their own personal funds and not out of the funds that might be raised from the sale of the goods?

A. Hirsch directly said to me—I understood he said that morning that the mortgage was promulgated that night. He said, Your money will be paid by us.

Q. Didn't he tell you the creditors would get all over and above the mortgage?

A. No, sir; these words were spoken by Mr. May when I spoke to him the second time.

Q. How many times did you speak to him?

A. Once only. This was the only time I met Mr. May, nine days after this happened, when I spoke in front of the Carbonate bank to him, May, in broad language. I says, I know all about this case. I know all about this robbery. I have six hundred and fifty dollars in that. I want my money. May says, I don't know anything about it. You will have to attach the same as the rest. I don't know anything about it. I said, I don't want your advice; and he said, I don't owe you anything. This stock belongs to us. You go and attach, and I guess likely you will get it. I says, That settles it; and I withdrew. That was the last that took place between he and I. I don't change the conversation at all as far as I am concerned. I am true as the Bible.

47 Q. The conversation that occurred between you and May was after you had seen Hirsch twice?

A. After I had seen Hirsch.

Q. In that conversation did you not tell Mr. May that unless you got your money that day you would attach?

A. No, sir; that is absolutely false.

Q. And did he not tell you then, All right; that is your own affair; attach if you want to; do as you please?

A. No, sir. I will give the gentleman more credit than he asks for. I said in plain language, I want my money, and I know what is up between you three, and I want my money, says I, I have waited long enough. He said, You will have to attach the same as the rest of them. I said then, I don't come to you for advise; I repeated it over again. He says, This is all I can do, and you will have to get the money like the rest of them; and we parted in front of the Carbonate bank.

Q. Dave May made no promise to you to pay you your money?

A. No, sir; no promises in the world whatever.

—— ——.

Subscribed and sworn to before me this — day of October, A. D. 1887.

—— ——.

SAMUEL RICH (defendant), a witness produced, sworn, and examined on the part of the complainants, testified:

Examined in chief by Judge DECKER:

Q. You are one of the defendants in this suit, are you?

A. Yes, sir.

48 Q. Are you indebted to Simon Hirsch and Co.; and, if so, how much, and what for?

A. I am. When I went East I went through Kansas City, and I told him I had to have money.

Q. Just state what it is for.

A. I owe him a thousand dollars. He made out a note and endorsed it as Simon Hirsch and Company, and I took that note to Chicago, and I sold it and got the money; discounted it to Leopold Brothers; they gave me the money for it.

Q. Then you executed the note to Simon Hirsch and Company, and they endorsed it?

A. Yes, sir.

Q. That is the thousand dollars you are indebted to them?

A. Yes, sir.

Q. When was that?

A. That was last February, when I went on my way East.

Q. February, 1887?

A. Yes, sir.

Q. Are you indebted to Rose Hirsch in any sum?

A. Yes, sir; seven hundred and fifty dollars.

Q. How long have you been owing her that much?

A. She gave me that money; that was last August, before I was married to her, in 1886; that money was in the hands of David May, and she gave me an order directing him to give it to me.

Q. You got the money?

A. Yes, sir.

Q. That was never paid?

A. No, sir; Mr. David May gave me a check for the money.

Q. Are you indebted to Jacob Rich in any sum?

A. Jacob Rich put in ten or fifteen dollars for his work to save some money, and he put the money with me, as he didn't have any amount to put in the bank.

49 Q. What did it amount to?

A. Six hundred and some odd dollars, and I paid him with money which they kept for me. I paid him the difference.

Q. How much was it?

A. Five hundred dollars was the balance due.

Q. Has that ever been paid?

A. No, sir.

Q. Where did you get the two hundred dollars you paid Mr. Thorn?

A. I got it of Mr. Hirsch. I went up there the next day and he gave me three hundred dollars.

Q. Did he give it to you that day—the day you paid the two hundred dollars?

A. Yes, sir; the same day.

Cross-examination by Judge GUNNELL:

Q. Now, you got, you say, three hundred dollars from Adolph?

A. Yes, sir.

Q. He loaned you that three hundred dollars?

A. No, sir; that was the money they had back. They had eight or nine hundred dollars of my money up there; Hirsch gave me three hundred dollars.

Q. Rudolph had some of your money at the time?

A. I don't know who had it.

Q. Hadn't you appointed Rudolph to get it?

A. That was after; this was the next morning after the transfer was made.

Q. Before that you had told Rudolph to collect the money while you was gone?

A. I left Rudolph there to get the money and deposit the money in the bank for me. That was the agreement between David May, myself, and Doctor Dougan—that I leave Adolph Ney in the store to take every night the receipts of the money and deposit it
50 in the bank and deposit on this fifteen hundred dollars of the money David May had endorsed for me.

Q. Then the money Adolph Hirsch gave you was not borrowed?

A. No, sir.

Q. How did you come to call for it?

A. Because they had some of my money there they hadn't deposited.

Q. Because you knew Rudolph had some he hadn't deposited?

A. Yes, sir; of course; because he had some of my money.

——— ———.

Subscribed and sworn to before me this — day of ———, A. D. 1887.

———— ———,

Notary Public.

RUDOLPH NEY, a witness produced, sworn, and examined on the part of the complainants, testified:

Examined in chief by Judge DECKER:

Q. What is your name, age, business, and residence?

A. Rudolph Ney; age, twenty-seven and a half; wholesale and retail liquor dealer; residence, Leadville, Lake county, Colorado.

Q. How long have you been in business for yourself?

A. About two months and a half.

Q. For whom were you engaged in business before that?

A. Mr. Adolph Hirsch—that is, before; just before I started there.

Q. For whom were you doing business between the middle of February and about the 21st of March last?

A. I was with Mr. Hirsch then.

Q. In what capacity?

A. As book-keeper.

Q. What had you to do with the business of Sam. Rich at that time?

51 A. What have I to do with it? Every once in awhile in the evening I collected some money; the money they took in during the day I got in the evening.

Q. Would you go in the evening and get the money?

A. Yes, sir.

Q. During the whole time Mr. Rich was absent from home?

A. As long as I was in town I had to make some business trips for Mr. Hirsch, and couldn't go there.

Q. You think you were not away during the whole time Mr. Rich was absent in the East?

A. No; I was not always present; always here; awhile I was gone.

Q. What did you do with the money that you took in there that you received from Mr. Rich's business?

A. I took care of it.

Q. What did you do with it?

A. Part of it I deposited in the bank.

Q. What part did you deposit in the bank—that that you received first or immediately after Mr. Rich went East?

A. Yes, sir; about a week it was; I can't tell exactly.

Q. At the end of the week after Mr. Rich went East what did you do with the money which you took in after that time and up to the time he returned?

A. I held it right in my pocket, sir.

Q. Why did you hold it in your pocket?

A. Mr. Rich told me before he left to deposit the money in the bank, and I went there and deposited, just as I said before, for a week or so, and they never gave me credit, but credited the money on the note, and I didn't know that, so I didn't know what to do, and I thought it best to hold the money until Rich gets back.

Q. Did you have a conversation with anybody as to why you should hold the money?

A. No, sir.

Q. Just held it on your own account?

A. Yes, sir.

Q. Isn't it a fact that the defendant Hirsch was the man
52 you did that work for?

A. Which work?

Q. Getting the money every evening.

A. No, sir.

Q. Wasn't the matter the fact of taking charge of the money, the receipts of the business placed with Mr. Hirsch?

A. Did I place the money?

Q. No. Was not it placed with Mr. Hirsch by Mr. Rich?

A. No, sir.

Q. Did Mr. Rich ever have any conversation with you about it?

A. He just told me he wouldn't trust one of his clerks in regard to his money, and asked me to do this as a favor; so I did it.

Q. Did he tell you to deposit it in the bank?

A. Told me to deposit it every morning in the bank and they would give me credit for it—that is, give him credit for it. He gave me his bank book, but they never gave him credit for it.

Q. Never gave him credit for anything?

A. Not on the book; they gave him a credit on the note.

Q. Didn't you say anything to Mr. Hirsch about that?

A. Hirsch, I believe, was not in town then.

Q. Did you say anything to Mr. May about it?

A. No, sir.
Q. You didn't talk to Mr. May about it at all?
A. About this money? No, sir.
Q. Had no conversation with him about it whatever?
A. No, sir.
Q. What did you do with the money? You say you put — in your pocket for a week and kept it there?
A. Yes, sir.
Q. What did you do with the money after that—finally what did you do with it? Did you keep it?
A. I returned it to Mr. Rich.
Q. When?
A. As soon as he asked me to give it to him. Whenever he got back I saw him and told him to come and get his money.
53 Q. After he got back, on the 20th or 21st of March, did you pay it to him at that time?
A. No, sir.
Q. How long after that did you pay it to hom?
A. Why, it was a very short time.
Q. Do you know how much you paid to him?
A. Not exactly. It was thirteen or fourteen hundred dollars I took in, and this was all returned, partly to the bank and partly to Mr. Rich.
Q. Well, there was not any returned to the bank after the first week?
A. No, sir; of course, I didn't think I would have to hold it for two or three weeks.
Q. Who took the money while you was absent?
A. Mr. Hirsch.
Q. How did he come to do it?
A. I asked him to do it.
Q. It was at your request?
A. Yes, sir.
Q. What became of the money?
A. He gave it to me as soon as I came back from Glenwood Springs.
Q. He gave it to you?
A. Yes, sir.
Q. Did you give a memorandum of the money you received at the store every night?
A. Yes, sir; a receipt.
Q. That was the money you received every evening?
A. Yes, sir; that is the thing you have got there. That is a copy.
Q. Is this in your handwriting?
A. I think it is the time I was in Glenwood Springs. Hirsch signed these things.
Q. Was that between the 28th of February and the 7th of March?
A. I can't tell you exactly. I don't believe it was; I don't think so.
Q. It don't seem you were absent any other time?

A. This is a copy; it is not the original. Perhaps the clerk Mr. Rich had at the time can tell you.

Q. Does this paper contain all the money you took in?

54 A. I don't know.

Q. Is the paper in your handwriting?

A. Yes, sir; that is my handwriting.

Q. When you made this paper did you inten- to give a statement of all the moneys received?

A. Four months afterwards——

Q. When you made this paper did you intend to make a statement of all the moneys received, taken in, during the absence of Mr. Rich?

—. No, sir; this is simply for the clerks, so they would have something to show for the money.

Q. Then it was not all the money that was taken in?

A. I expect it is. I can't tell whether there was any taken in afterwards.

Q. By you, that you received, I am speaking of.

A. I didn't receive all of it. This is just a copy.

Q. You intended to give a true copy of what you took in?

A. Certainly.

Q. Isn't that true?

A. I expect so; all that is there is true.

Q. Didn't you give it all?

A. Yes, sir.

Q. Then it is all there, isn't it?

A. I expect so.

Q. How much money did you give to Mr. Rich after his return?

A. Well, I can't exactly tell you, Judge, because I don't know how much I deposited in the bank. On that night I gave him all I had.

Q. You carried it right along in your pocket?

A. Not always. Generally in the daytime I had it; nights I put it in the safe; sometimes in "Schultze & Dale's" safe; sometimes Hirsch's safe. Once in awhile I carried it in my pocket.

Q. That is to say, if you got $25 one day, and $110 another day, and $50 another day, and $107 another day, you would take these different sums all the way along from the 14th of February

55 to the 20th of March, and put them together and carry them in your pocket, and you would put them in Hirsch's safe or Schultze & Dale's?

A. Yes, sir.

Q. Why did you put it in Schultze & Dale's safe?

A. Just for accom-odation. Schultze and Dale's place is across the street from Rich's place.

Q. You were book-keeper at that time for the defendant Hirsch, were you not?

A. Yes, sir.

Q. And had plenty of room in his safe?

A. Yes, sir.

Paper referred to by the witness offered in evidence by the complainants and marked "Exhibit A."

Objected to by defendants Hirsch and May, as it is a mere copy.

Q. How long had you been with the defendant Hirsch as bookkeeper or clerk?

A. I came here, I think, on the 14th of September, 1885, and worked for them until the month of August, 1887.

Q. Was Schultze when you came here in the employ of Hirsch?

A. Yes, sir.

Q. How long did he continue in Hirsch's employ?

A. I believe he has been with him until the first of April, 1886.

Q. This is the same Schultze whom you have mentioned as of the firm of Schultze and Dale?

A. Yes, sir.

Cross-examination by Judge GUNNELL:

Q. Now, you collected the money, did you not, all the time that you were in town while Rich was away?

A. Yes, sir.

Q. You collected that money at the request of Rich?

A. Yes, sir.

Q. Did Adolph Hirsch and David May have anything to
56 do with commanding you to collect that money?

—. No, sir.

Q. When you went away, then, to Glenwood Springs, how long were you gone?

A. A week or so. I can't tell exactly.

Q. Something in the neighborhood of a week?

A. Yes, sir.

Q. At the time you first commenced to collect the money Adolph Hirsch was not here at all?

A. I don't think he was here; I believe he was East.

Q. He came back before you went to Glenwood Springs?

A. Yes, sir.

Q. When you went away you asked Adolph Hirsch to collect the money in your stead?

A. Yes, sir.

Q. When you came back again did Adolph Hirsch turn that money over to you as though it was your own?

A. Yes, sir.

Q. When Rich came back you paid him all the money you had left that you had collected?

A. Yes, sir.

Q. You had used some of that money, had you not, in paying expressage in freight for Rich?

A. No; I did not get that money; they gave me the receipts or the money that they could spare.

Q. The clerks in the store paid for freight themselves?

A. Yes, sir; you can see here on this paper; here is the 16th, $16.

I went there probably on the morning of the 17th and they didn't have any money.

Q. What did they tell you then?

A. Because they paid it out for freight the receipts were very small; it was not worth while to give me anything.

Q. Then Adolph Hirsch and David May had nothing to do with the receiving of this money by you?

A. No, sir; nothing at all.

Q. The reason you ceased depositing in the bank was the bank was giving a credit on the note instead of a credit in the bank account?

A. Yes, sir.

57 Q. You understood you was to deposit the money for Rich as a bank account?

A. Yes, sir.

Q. And you didn't know about it when you found they was putting it to his credit on the note?

A. Yes, sir; I didn't know whether it was right.

Q. That was the reason of your refraining from depositing it?

A. Yes, sir.

Q. Because you didn't understand this to be your instructions from Rich?

A. No, sir.

Q. Didn't you give to Hirsch three hundred dollars of that money that you had left over and Hirsch gave Rich three hundred dollars?

A. Yes, sir.

Q. Hirsch gave Rich three hundred dollars?

A. Yes, sir; three hundred dollars he told him to do; I was downtown.

Q. When you came back to Hirsch's store he told you he had let Rich have three hundred dollars?

A. Yes, sir; out of that money I left for Rich.

Q. That was part of the money you had collected—had left?

A. Yes, sir.

Q. And what was it Hirsch had to do with the money?

A. I think that was all; I believe once he bought a draft of one hundred dollars.

Q. Did you refund the money to him?

A. Yes, sir.

Q. And when you came back from Glenwood Springs Hirsch gave you the money he had collected at your request?

A. Yes, sir.

Redirect examination:

Q. Now, I understand that out of the money you received from the store of Sam. Rich you paid a check or draft of one hun-

58 dred dollars and three hundred dollars to defendant Hirsch to reimburse him for the three hundred dollars he gave Rich? I am stating it correctly, am I; is that right so far?

A. Yes, sir.

Q. Now, what became of the balance of that money that you received from Rich's store? I mean outside of what you deposited in the bank and outside of this four hundred dollars.

A. I returned it to Mr. Rich.

Q. When; how long after you paid this three hundred dollars?

A. It must have been several days, as soon as he asked me for it.

Q. Where did you pay it to him?

A. I believe I paid it at a saloon here—Schultze and Dale's—if I am right; I might be mistaken; I believe it was there.

Q. At Schultze & Dale's saloon?

A. Yes, sir; I had the money with me.

Q. Do you know how much it was?

A. It must have been the balance of that; I can't tell, exactly.

Q. The balance of what you paid and deposited?

A. Yes, sir.

Q. Where did you carry it on your person?

A. In this pocket.

Q. In your right pants pocket?

A. Yes, sir.

Q. Was it loose or in a pocket-book?

A. In a bag—a sack—a little money sack.

Q. Do you carry your own money in a money sack or book?

A. No, sir; I don't carry so much but I can carry it in my vest pocket.

Q. What time of the day or night was it you paid this money to Rich?

A. I believe it was after supper I met him there.

Q. Well, what time after supper?

A. The early part of the evening.

Q. Between eight and nine o'clock?

A. I think so—I think it was, though it may have been before supper; I think it was, if I remember right when I gave it to him.

59 Q. Was it several hundred dollars that you gave him?

A. Yes, sir.

Q. Four or five hundred dollars?

A. Between; I can't say positively.

Q. To the best of your recollection, between four and five hundred dollars?

A. Yes, sir.

60 T. J. CASH, a witness produced, sworn, and examined *of* the part of the complainants, testified:

Examined in chief by W. S. DECKER, Esq.:

Q. What is your name, age, business, and residence?

A. T. J. Cash; age, 29; business, clerking; residence, Leadville, Lake county, Colorado.

Q. Do you know Sam. Rich, Adolph Hirsch, and David May?

A. I do.

Q. How long have you known them and each of them?

A. I have known Sam. Rich personally about a year and a half. David May, I don't know as I know him yet; I just know him; I am working for him now; I just know him to speak to, "How do you do," and that is all.

Q. Adolph Hirsch?

A. Adolph Hirsch, I have known him for six or eight years, I guess.

Q. When did you first see David May to know who he was?

A. A good many years ago.

Q. How many years?

A. Four, five, or six; I can't say; might have been five or six or seven years.

Q. How long have you been working for David May?

A. About four days; this is the fifth day. I am not working for him. I am working in a man's place at this time.

Q. How long did you work for Sam. Rich?

A. About ten months.

Q. Were you working for him at the time his business was closed up?

A. Yes, sir.

Q. And it was ten months previous to that that you worked for him?

A. Yes, sir; with the exception of about three weeks in that time.

Q. Do you know the day of the month that Mr. Rich went East last February?

A. No; I do not.

Q. Was it about the middle of the month?

61 A. The best of my recollection is that it was about the 14th or 15th.

Q. Do you remember the day in March that he returned?

A. I can't say.

Q. Was it about the twentieth or 21st?

A. I can't say.

Q. You remember the fact of his returning?

A. Yes, sir; I remember how long he was gone. He was gone about five weeks.

Q. For a month or two previous to his going East, I will ask you if you saw David May and Adolph Hirsch frequently at the store of Mr. Rich.

A. Adolph Hirsch I seen there quite often. He dropped in now and again, and David May, I don't know how often. I have seen him in the store. I am not sure whether I have seen him once, twice, or a dozen times.

Q. You don't remember the number of times?

A. I don't know as I ever saw him there before Sam. went East.

Q. You have recollections of seeing Mr. Hirsch there often?

A. Yes, sir; Hirsch was a friend of the store. He used to be in pretty often. He was in pretty often on account of relationship, I presume.

Q. You remember the day Mr. Rich returned from the East?

A. I remember the time—the fact.

Q. How soon after his return did you see David May or Hirsch at the store?

A. May was there after dinner, I believe.

Q. On the day he returned?

A. Yes, sir; about one o'clock, I guess. I don't know whether he was there before that or not.

Q. How about Hirsch?

A. Hirsch I don't remember of.

Q. During the time Rich was East, from the 14th of February until he returned, I will ask you if Hirsch and May were frequently at the store?

A. Hirsch was. May was not in the store, to my knowledge.

62 Q. When was the business closed up, so far as Rich was concerned?

A. I don't know; I went to lodge about half past seven or quarter to eight.

Q. On the same day he returned?

A. On the day he returned; the next morning I went into the store and David May had possession of it.

Q. Did you hear a conversation between Sam. Rich and David May on the day that Rich returned from the East, in the store of Rich, between those two gentlemen?

A. Well, they were speaking very quietly.

Q. Did you hear the conversation?

A. I can't say that I did.

Q. Can you say that you did hear any conversation; did you see them talking together?

A. I saw them talking together.

Q. Did you hear their conversation—any part of it?

A. I can't recollect now positively in regard to that.

Q. What is your best recollection of what was said between those gentlemen?

A. I have got no positive recollection of it.

Q. Did you hear a conversation between Sam. Rich, the defendant Rich, and David May at any other time than that?

A. No.

No cross-examination.

And thereupon the further taking of testimony was adjourned to 2 p. m. the same day.

63 Parties met pursuant to adjournment; and thereupon M. HARRIS, a witness produced, sworn, and examined on the part of the complainants, testified:

Examined in chief by W. S. DECKER, Esq.:

Q. What is your name, age, business, and residence?

A. M. Harris; age, 57; merchant in Leadville; residence, in Denver. I have my family there.

Q. Do you know Sam. Rich, Adolph Hirsch, and David May?
A. Yes, sir.
Q. How long have you known each of them?
A. About seven or eight years.
Q. In what kind of business are you engaged?
A. Clothing.
Q. Gents' furnishing goods?
A. Yes, sir.
Q. Just state the kinds.
A. Clothing, boots and shoes, furnishing goods, hats, and caps.
Q. How long have you been engaged in that business?
A. Since 1859.
Q. Continually?
A. Yes, sir.
Q. Do you know the market value of clothing, boots and shoes, hats and caps, and gents' furnishing goods in this market?
A. Yes, sir; I know it.
Q. Do you know of a certain stock of goods that was transferred from Samuel Rich to Adolph Hirsch and David May?
A. Yes, sir; I know that stock.
Q. Did you examine it?
A. I examined it. I just went one morning to take out some goods for "Trimble and Hunter." It was a couple of days before they made the assignment of the stock.
Q. Were you present at the time the stock of goods were sold by May & Hirsch?
A. No, sir.

Q. State what kind of an examination you made of the
64 stock at that time.

A. I just took out enough——
Q. State how you examined it.
A. In my opinion, I can say there was thirty-five to forty thousand dollars there.
Q. Cash value?
A. Cash value. When I pay the cash for it I can buy a little cheaper.

Objected to as not being responsive to the question, and the witness has not yet shown himself to be competent to testify, as he has done, to the value.

Q. State the examination you made of the stock to determine in your own mind as to its value.
A. I just went around and seen the stock—so many clothing, so many hats, and so many furnishing goods. I can't say it is worth, for sure, forty thousand dollars, but it was a big stock of goods, and my opinion was thirty-five to forty thousand dollars.
Q. Did you examine the boots and shoes?
A. I don't believe he had them.
Q. Did you examine the gents' furnishing goods?
A. I didn't examine; I just looked over. I don't know whether

they were full boxes or not. I examined the goods I picked out for "Trimble & Hunter."

Q. You examined the furnishing goods?

A. Yes, sir.

Q. And the clothing?

A. The clothing was lying right on the tables.

Q. And you looked that over, did you?

A. Yes, sir.

Cross-examination by Judge GUNNELL:

Q. You say you looked through the boxes that contained the furnishing goods?

65 A. I looked through as I took it; just what I took, not through the others.

Q. Do you know how much there was of the gents' furnishing goods?

A. I picked out all the furnishing goods.

Q. What do you mean by that?

A. I picked out some furnishing goo-s that time I took some for "Trimble & Hunter."

Q. Can you tell me how many goods there were—gents' furnishing goods—in the store?

A. No, sir; that I couldn't.

Q. Can you tell me how many suits of clothes there were?

A. No, sir.

Q. You don't know how many suits there were?

A. No, sir; except when I go through and count them.

Q. Do you know how many boxes of hats there were?

A. No, sir.

Q. How many hats are there ordinarily contained in a box?

A. Some two; some three, and some six.

Q. Sometimes the boxes are empty?

A. Sometimes they are empty. If a person wants to fill up the store they want to leave empty boxes.

Q. You don't know but they were empty boxes?

A. That I don't know.

Q. Do you know how many boxes there were?

—. No, sir; the best I know is what was piled up; that is the best I know.

Q. Do you know how many suits of clothes there were?

A. No, sir.

Q. Do you know how much the clothes were worth in the market?

A. Some $15; some $25; some $10, and some $5.

Q. Yet you don't know how many suits there were?

A. No, sir.

Q. How do you arrive at the conclusion that the stock was worth thirty-five thousand dollars?

A. It was a store thirty-five feet front by 100 feet deep.

Q. You don't know whether there were goods in the boxes or not?

A. That I don't know.

66 Q. They may have been empty?
A. They may.
Q. Then if the boxes which should have contained hats and gents' furnishing goods were empty the store would not be worth thirty-five or forty thousand dollars?
A. No, sir; of course not.
Q. You can't tell how many suits of clothing there were?
A. No, sir.
Q. Did you count the suits at that time?
A. No, sir; it was not my business to count them.
Q. Did you estimate the value of the suits at the time?
A. No, sir.
Q. What did you do for "Trimble & Hunter"?
A. I picked out for "Trimble & Hunter;" they asked me and Charlie Sands to pick out some goods.
Q. What was the value of the goods?
A. I picked out six hundred dollars; with expenses twelve hundred dollars; he told me to pick it out.
Q. About twelve hundred dollars' worth of goods?
A. Yes, sir.
Q. The balance of the goods you didn't examine?
A. No, sir.
Q. It is mere guess-work when you say you think the goods were worth thirty-five or forty thousand dollars?
A. Yes, sir; it was what I thought.
Q. You wouldn't be willing to buy those goods and pay forty thousand dollars for them?
A. If I was going to buy, I would take up stock.
Q. According to the examination you made, you would not be willing to buy and give thirty thousand dollars?
A. I would want to take up stock; I wouldn't buy a pig in a sack.
Q. Your testimony is a pig in a sack as to what they were worth?
A. Yes, sir.
67 Q. So you couldn't tell near enough to buy this stock or advise a friend to buy?
A. I would advise a friend to take up stock who wanted to buy.
Q. You don't know how many goods of any character there was there?
A. No, sir.
Q. Whether suits or clothing, coats or hats?
A. The suits of clothing were piled up on the table.
Q. They were not worth any such money as that—thirty or forty thousand dollars?
A. The suits of clothes and furnishing goods, too?
Q. I mean the suits of clothing alone?
A. No, sir.
Q. They were not worth thirty?
A. No, sir.
Q. Not worth twenty, were they?
A. I guess worth twenty.

Q. How do you guess that?

A. I know how many tables he had; some piles is twenty suits, some fifteen suits, and some had eight suits.

Q. You don't know what kind of suits they were—the value of them?

A. No, sir; that I don't.

Q. So you don't know to any degree of certainty the value of the stock?

A. I told you it was my opinion, I say, from thirty to thirty-five thousand dollars.

Q. Would you say you had an opinion it was worth that much without knowing how much was there?

A. If I bought the goods I would take up stock before I bought.

Q. Then your testimony is mere guess-work?

A. Just the same.

Redirect examination:

Q. The opinion you formed, Mr. Harris, was from the experience you have had?

68 A. Yes, sir; that was my opinion.

Q. From the examination of the stock of goods now you couldn't be very well deceived in the clothing, could you, that you saw on the shelves?

A. No; that was on the table; I might be deceived one thousand dollars one way or the other, but no more.

Q. And you could make a fair estimate from the knowledge you have of stock of goods?

A. Yes, sir.

Q. I understand you to say that in your judgment the whole stock was worth from thirty-five to forty thousand dollars?

A. Yes, sir.

Q. You say, too, that the gents' furnishing goods—were they on the counters or shelves?

A. On the shelves, in boxes piled up to the ceilings.

Q. Did you examine the qualities of goods in many cases?

A. I examined the goods what I took out; the balance I didn't.

Q. Didn't you examine others in determining?

A. I examined what I took out, what to take and what not to take.

Q. So you saw the quality of the gents' furnishing goods in that way, did you?

A. Yes, sir.

Q. The boxes that you examined, how were they—the value?

A. They were of value—the boxes that I took.

Q. Well, the others you examined to see what to take. Was that before Mr. Rich returned from the East in March?

A. It was in March, I guess, three or four days after he was closed up.

Q. It was after he closed up?

A. Yes, sir.

—. After he closed up you examined these goods?
A. Yes, sir.

Recross-examination:

69 Q. You said to me awhile ago that you didn't examine any goods, except those you picked out for "Trimble & Hunter."

A. Some were in full boxes, some were not full, and I took full boxes.

Q. Isn't it true that the goods you took for "Trimble & Hunter" were California goods and not in boxes?

A. Some California goods and some in boxes; some clothes.

Q. Now, how many of the goods did you examine at the time you picked out these goods for Trimble & Hunter?

A. About a dozen or a half a dozen boxes.

Q. How many boxes were there in the store?

A. There were lots of boxes I didn't examine piled up.

Q. You didn't examine one-half the boxes in the store?

A. No, sir; not a third.

Q. Most of the furnishing goods that you did examine were California goods?

A. California goods come in bundles.

Q. These were the ones you set aside for Trimble & Hunter?

A. Yes, sir.

Q. When you speak of the value of goods what do you mean, their value to sell at retail in the store or their value to sell in the market by advertisement?

A. If you advertise and sell in the market they won't bring that much.

Q. They are worth, in your judgment, the price you have fixed to keep them in the store and run that store?

A. No, sir; to sell at retail.

Q. But to pick them up and sell them at sheriff's sale, or if a man wanted to sell out his business, what would that stock then be worth?

A. That I can't say. If I would buy that stock I would take it up first and pay so much on a dollar.

70 Q. But you wouldn't be willing to give over twenty thousand dollars for that stock to buy them in bulk?

A. Yes, sir; I would give twenty.

Q. How much would you give if you bought them in bulk—on the dollar as you supposed they were worth by retail?

Objected to as being incompetent and immaterial.

A. Well, some goods is worth seventy-five cents on a dollar; some sixty-five and some eighty-five cents on the dollar.

Q. Some as low as fifty cents on a dollar?

A. Very common goods are worth fifty cents.

Q. How much of this stock was common and how much superior?

A. That I don't know.

Q. You don't know what proportion was superior and how much common goods as you call them?
A. No, sir; that I don't.

Redirect examination:

Q. What was the condition of that stock, good?
A. The condition was good; it was all goods piled up.
Q. Good goods?
A. Yes, sir.

LOUIS E. BROWN, a witness produced, sworn, and examined on the part of the complainants, testified:

Examined in chief by W. S. DECKER, Esq.:

Q. What is your name, age, occupation, and residence?
A. My name is Brown; occupation, dry-goods clerk; residence, Leadville; age, 39.
Q. Have you ever been engaged in the buying and selling
71 of clothing, gents' furnishing goods, hats, and caps?
A. Not in clothing; a very little in the furnishing goods.
Q. Do you know the value——
A. I can't say I do, not exactly; I handled clothing at one time and have a very slight knowledge.
Q. How long since you handled clothing?
A. Four years, I guess.
Q. Did you have a knowledge of the goods at that time?
A. Very little, because I handled very little; I was on the dry-goods side.
Q. Did you examine this stock of goods?
A. No, sir; I can't say I did; I only passed through there; I just went in there a good deal.
Q. You then say you are not personally acquainted or sufficiently acquainted with that character of goods to give an opinion as to its value?
A. No, sir; only a rough estimate of the goods.
Q. It is a personal opinion not based on the market value of the goods?
A. Yes, sir.
Q. Were you present when that stock of goods were sold?
A. Yes, sir; I was in the store at the time it was sold.
Q. Who was it sold by?
A. The sheriff sold them; Mr. Korty, the deputy sheriff.
Q. For whom?
A. May & Hirsch.
Q. Do you know who it was sold to?
A. I think Mr. Joe Shoenberg; I think he was the man that made the bid.
Q. Was it sold at public sale, public auction?
A. Yes, sir.
Q. Was it sold in bulk or by piece?
A. It was sold in bulk.

Q. All sold at once?

A. Yes, sir; they first divided it up for some one to bid on the furnishing goods; some one bid on the furnishing goods, and then they ceased and put it up in bulk and sold it.

72 Q. And Joseph Shoenberg was the purchaser?

A. I think so; yes, sir.

Cross-examination by Judge GUNNELL:

Q. Were you there from the beginning of the sale to the end of it?

A. I believe I was. I think I was there about the time the deputy sheriff got on the stand and commenced selling.

Q. Were you there when the goods were offered first in small parcels? Was the furnishing goods offered first?

A. Yes, sir.

Q. When the proposition was to sell them in small parcels?

A. I don't remember small parcels. I remember some one bid a certain amount.

Q. What, in parts?

A. Oh, the furnishing goods, and then so much was bid for the clothing. I think that was the way the bid was first started, and then they changed it and sold it in bulk.

Q. Don't you remember that in the first instance the goods were offered in bulk, and a small bid was made of fourteen thousand five hundred dollars, and that then I myself, as the attorney for May & Hirsch, ordered that they should undertake to sell them in smaller quantities than that?

A. I think they did offer to sell them in smaller bulk, but I don't think there was any bids got on the small bulk, except for the furnishing goods.

Q. The furnishing goods were bid off?

A. It was in this way, so much for the clothing and so much for the furnishing goods. Monheimer made a bid on the furnishing goods.

Q. Then don't you recollect that bid was held for a long time, and no other bid was made?

A. Yes, sir.

Q. And that that bid was a very low one on the furnishing goods?

73 A. I don't remember. I think it was four or five or six thousand dollars.

Q. Was not it apparent to you that the goods were sold on that occasion for the best price they would bring by that audience?

Objected to as being immaterial and incompetent, and the witness is incompetent to testify on that subject.

A. That is a hard question to answer, whether they brought more in that way.

Q. The question I ask is, Didn't it appear so from the endeavor made?

A. Yes, sir.

Q. Was not it apparent to you that if we sold the goods in small quantities this, that, and the other would have picked out what he wanted and leave goods unsold, and that it brought a better price sold in bulk?

Objected to for the reasons above.

A. I think that is so.
Q. You think that is true?
A. I think it is; yes, sir.

74 CHARLES SANDS, a witness produced, sworn, and examined on the part of the complainants, testified:

Examined in chief by Judge DECKER:

Q. What is your business?
A. Clothing business.
Q. How long have you been in the clothing business in Leadville?
A. I have been here since 1880.
Q. In that business?
A. Yes, sir.
Q. Gents' furnishing goods connected with it, boots and shoes, hats and caps?
A. Yes, sir; the entire business.
Q. Are you acquainted with the value of clothing, gents' furnishing goods, hats and caps, boots and shoes, in this market?
A. I think so.
Q. Did you know this stock of goods that was transferred by Samuel Rich to May and Hirsch last March?
A. I saw it on the morning of the sale.
Q. Did you make an examination of it?
A. I looked it over a little.
Q. Were you there at the sale?
A. Yes, sir.
Q. Did you make a bid at the sale?
A. No, sir.
Q. State what the market value, in your judgment, was of that stock of goods.

Objected to, unless the question is asked what the market value was at retail to sell in the store from day to day or what the market value was to sell at wholesale at one time.

A. Well, I can't say exactly, but I think there was thirty-five or forty thousand dollars' worth of stuff in there.
Q. Now, what, in your opinion, was the wholesale value of that stock of goods? Is that the price you fixed on it?
75 A. I thought there was that many goods in there.
Q. At wholesale price?
A. Yes, sir; there was that many goods in there.

Cross-examination by Judge GUNNELL:

Q. Mr. Sands, did you count the number of suits there were in that store?

A. No, sir; I did not.

Q. Did you look at each suit in order to see what that suit was worth?

A. Just going through I didn't look at each suit. It would take more time than I had.

Q. How long a time would it have taken you to examine that stock of goods carefully and estimate what they were really worth at wholesale price?

A. It would take about a day and a half or so.

Q. Now, how much time did you occupy in examining that stock of goods?

A. I think I was in there about an hour before the sale commenced.

Q. For about an hour?

A. Yes, sir; as close as I can say.

Q. Then your examination did not take over an hour, or possibly two hours?

A. No; I was not there two hours.

Q. You were present when the sale took place?

A. Yes, sir.

Q. Didn't you have a man there to bid for you on that stock of goods?

A. Yes, sir.

Q. Do you remember the highest bid offered by your man for the goods?

A. Yes, sir.

Q. How much was it?

A. I think twenty thousand and fifty dollars.

Q. Some one then offered twenty thousand and one hundred dollars and you didn't bid higher?

A. I didn't; I stopped at that.

76 Q. You stopped there?

A. Somebody else bought it.

Q. Then you were not willing to pay over twenty thousand and fifty dollars?

A. Well, I didn't.

Q. How could you say the goods were worth thirty-five or forty thousand dollars if you didn't make more than an hour or an hour and a half's examination, when you say it would take a day and a half to go through the stock? You didn't make an aggregate estimate of the value?

A. No; that is what I thought.

Q. You thought that from looking over generally?

A. Yes, sir.

Q. And you might have passed through it and found the boxes empty and the clothing of inferior quality and not worth that much money?

A. Yes; that might be so. I don't know what was in the boxes.

Q. Whether they were full or empty?

A. No, sir.

Q. Did you make any estimate of the gents' furnishing goods, as to their value?

A. I looked through there, certainly, just as I told you before.

Q. You merely made a rough guess?

A. A rough guess at that time, and talked with some other parties.

Q. You didn't make such an estimate as you would have made if Mr. Rich proposed to sell out to you?

A. He never proposed anything like that.

Q. I say you didn't make such an estimate as you would if Rich proposed to sell out to you and you thinking of buying him out?

A. That is a different business. If a man goes into a business like that he wants to buy cheap, and when a man wants to buy up anything he takes up stock.

Q. You didn't take up stock on those goods?

A. No, sir.

77 Q. You don't know what the goods were really worth?

A. I merely thought the goods were worth that in the house at the time.

Q. And what you thought was merely guess-work?

A. Certainly, without taking up stock.

Q. Do you remember having a conversation with your brother and Charley Cavender, in the presence of Adolph Hirsch, at the time this sale was going on, in which you said to Cavender that you wouldn't bid more because there was no more than twenty-four thousand dollars' worth of goods there, to buy in that way?

A. I don't recollect of any such thing.

Q. Do you remember the circumstance of telling Cavender not to bid any higher than twenty thousand and fifty dollars?

A. That may be. I don't recollect it.

Q. You did tell him to stop at that?

A. I don't know. He didn't bid any more.

Q. You didn't authorize him to bid any more?

A. I guess not. I don't know how it came up exactly, but anyway we didn't bid any more.

Q. Well, now, just refreshing your memory and think of it—if you didn't say at the time you wouldn't bid any more because there was no more than twenty-four thousand dollars' worth in the store?

A. I don't recollect; anyway, I remember we didn't bid any more; probably that was all the money we had.

Q. Didn't you make the remark at the same time that you would loose money if you bought the stock for a higher price than twenty thousand and fifty dollars?

A. I don't recollect that; if I would I would not have offered.

Q. Now, when you speak of these goods being worth thirty-

78 five or forty thousand dollars, don't you speak of them as worth that if they are in the store and the stock kept up and sold from day to day at retail?

A. Yes, sir.
Q. That is the way you make that estimate?
A. Yes, sir.
Q. You don't mean to say it was worth that much to buy that stock of goods out?
A. A man could step in there and run the business.
Q. If a man could step in there and keep on with the business?
A. Yes, sir.
Q. But if the goods were being sold by the sheriff or auctioneer, then they were not worth that much money?
A. That is the reason I didn't bid any more. I thought that was enough money at sheriff's sale.
Q. Twenty thousand fifty dollars was enough to bid at sheriff's sale?
A. Yes, sir; if a man wants to make any money out of it.
Q. You were there at the time the sale took place?
A. Yes, sir.
Q. Did you see how the goods were offered for sale?
A. First they offered it at bulk, if I recollect right.
Q. First they were offered in bulk, you say?
A. Yes, sir.
Q. And the bid was a low one, was it not?
A. I believe so.
Q. Then they were offered in parcels, were they not?
A. I think somebody made an offer to sell it separate. I don't know how it was.
Q. Then the order was made that they be sold in bulk again?
A. Yes, sir.
Q. And they were so sold?
A. Yes, sir; I believe so.
Q. I will ask you to state whether or not, in your judgment, at that sale the goods were sold in such a manner as to bring the highest price they could be made to bring that day. To explain,
79 would they have brought more if sold in parcels—all the gents' furnishing goods, then the hats and caps, and then certain suits of clothing. Would they have brought more than they did bring, sold as they were?
A. I can't say what they would bring.
Q. Don't you say that the effort was made to make the goods bring all the money they could be made to bring before the people at the sale?
A. I guess so; I don't know.

Redirect examination:

Q. What was the condition of that stock of goods; was it good?
A. Seemed so; very good.
Q. Was there many new goods there?
A. Yes, sir; some.
Q. What do you mean by some new goods?
A. There was some new goods come in.

Q. A dollar's worth, a thousand dollars' worth? Estimate it.
A. I can't say.
Q. As near as you can?
A. There was some. I couldn't tell the new goods from the old.
Q. It was a good stock, taking it all through?
A. Yes, sir.
Q. When you made a bid of twenty thousand fifty dollars, what do you estimate—what per cent. of the stock do you consider it?
A. I thought it was about fifty or sixty cents; something like that.
Q. You say in answer to Judge Gunnell's question that it was worth thirty-five or forty thousand dollars if sold out at retail. Is that the way you wante to be understood as that being its price, at retail or wholesale—taking the stock at wholesale?
A. If we bought that much at wholesale it would not have brought forty thousand dollars.
80 Q. Would it — thirty-five?
A. Probably so.
Q. Was there an invoice of that stock of goods for your examination kept there by May & Hirsch?
A. No, sir; I didn't see it.
Q. Do you know whether there was an invoice taken of that stock of goods by them?
A. No, sir.
Q. They didn't show any to you?
A. No, sir.
Q. Do you know whether they showed any to anybody else?
A. No, sir; I can't say.
Q. Did you ever hear of them having it, up to the time of the sale?
A. No, sir; that was the first I heard of it.
Q. Do you know how they were selling—under an execution or a chattel mortgage?
A. Something about a morigage; that is all I know.

Recross-examination:

Q. Didn't you examine the goods carefully enough to find that a great many of them consisted of small suits and broken suits?
A. I didn't look for any; of course, in any stock there is some. A store running for some time, there is some bad stock.
Q. Didn't you find the usual amount of odd stock?
A. Yes, sir.
Q. How long had that store been running?
—. Three or four years; I don't know exactly.
Q. You know it was running for three or four years?
A. Yes, sir; probably they had some stock older than that.
Q. You found the ordinary amount of odd stock there?
A. Yes, sir; like any other store, I should judge.
Q. Could you make an estimate of the number of people there at the time the sale took place?
A. I can't.

Q. There were pretty much all the merchants in town there?

81 A. Well, I don't know if they were all there; quite a good many.

Q. And still you say these goods would sell at wholesale for as much as thirty-five thousand dollars, and you and the others present would not bid over twenty thousand and fifty dollars?

A. I thought they were worth that.

Q. Twenty thousand and fifty dollars?

A. Yes, sir.

Q. You thought you could make some money if you bid that?

A. Yes, sir.

Q. You didn't want to bid any more?

A. No, sir.

Redirect examination:

Q. You say the goods were not worth more than twenty thousand and fifty dollars?

A. Not to me; I didn't want to bid any more.

Q. You estimate the goods worth from thirty-five to forty thousand dollars?

A. When I go into business like that I want to make money.

82 SAMUEL RICH, recalled by the complainants, testified:

Examined in chief by W. S. DECKER, Esq.:

Q. What was the condition of these boxes of gents' furnishing goods—were they full or empty boxes?

A. No, sir; they were all full; there was not an empty box on the shelf.

Q. How recently had they come in—the greater part of them?

A. The boxes were all full and mostly new goods came in.

Cross-examination by A. T. GUNNELL, Esq.:

Q. Mr. Rich, how long had you been back from the East at the time these goods were sold?

A. Just that day.

Q. You got back that day?

A. You mean when I turned the stock over?

Q. Yes, sir.

A. Well, the same day when I come to town.

Q. How long had you been gone?

A. About five weeks.

Q. When was the last time you went through the boxes to see how many goods there were in each box?

A. The last time was before I went East.

Q. How long before you went East?

A. The same week before I went East.

Q. The week before you went East you made a sort of an inventory?

A. No; we cleaned the store up and I looked everything through, what we needed.

Q. And after that time and up to the time of the sale you didn't make any estimate or examination?

A. No, sir; I didn't have any chance.

Redirect examination:

Q. What was the whole amount reported as being sold of
83 clothing, gents' furnishing goods, hats and caps?

A. The amount that Mr. Ney had there on that paper, $1,443.75.

Q. $1,443.75 is the amount?

A. Yes, sir; that was the return.

Q. That is the amount he reported as having been sold?

A. Yes, sir.

Recross-examination:

Q. That note was paid out of the goods sold?

A. Yes, sir.

Q. And a great many other expenses paid out of that amount?

A. Yes, sir.

Q. And this fourteen hundred and some odd dollars is what is left after paying the running expenses of the store?

A. Yes, sir.

Q. Then there was more goods sold than is shown by that paper?

A. Yes, sir; that is the money left after paying expenses.

Q. That is the money left after paying expenses—that fourteen hundred dollars?

A. Yes, sir.

84 *Defenses.*

SAM. MAYER, a witness produced, sworn, and examined on the part of the defendants May & Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. State your name, age, residence, and occupation.

A. I live in Leadville and have been living there 6 years constantly. I came here 7 years ago and have been here 6 years in business. My age is 35.

Q. What business have you been engaged in since you have been here?

A. Since I have been in the city I have been mostly engaged in the jewelry business and a little in the clothing business.

Q. How large, if any, experience in the clothing business?

A. Previous to that I was in the clothing business, not for myself, but in stores where I had charge of it.

Q. Then I will ask you to state whether or not you are acquainted with the value of dry goods and clothing, such as gents' furnishing goods, hats, caps, etc., in this market.

A. Yes, sir; I have some knowledge; yes, sir.

Q. Are you acquainted with David May, the defendant, and Adolph Hirsch?

A. Yes, sir.

Q. And Sam. Rich?

A. Yes, sir.

Q. Do you know the stock of goods that was owned by Sam. Rich and kept at what was know- as the "Lion clothing-house," on Harrison avenue, in this town?

A. Yes, sir.

Q. Did you ever at any time subsequent to the first of March last make an examination of that stock of goods?

A. Just on the morning of the sale. I was there a few
85 days before, but on the morning of the sale mostly.

Q. Do you mean by that the sale made by "May & Hirsch" under their mortgage?

A. Yes, sir.

Q. Did you make an estimate in your own mind at the time of the value of the stock of goods on hand then?

A. I made a rough estimate in bulk.

Q. What do you consider the goods worth?

Objected to because the witness has not shown himself competent to testify as to the value of that stock of goods.

Counsel for the defendants "May & Hirsch" here state that counsel for complainants may examine the witness as to his qualifications to testify.

Examination by W. S. DECKER, Esq.:

Q. When were you in the clothing business and how long ago?

A. From 1872 to 1879.

Q. Have you been in it since?

A. I have not; I have been buying clothing lately.

Q. In connection with your business?

A. Yes, sir.

Q. You are loaning money some?

A. Yes, sir.

Q. And you have loaned money on clothing?

A. Yes, sir; and I have bought clothing outside of that.

Q. Do you carry clothing in your business?

A. Some.

Q. About how much stock?

A. Not a great deal.

Q. A thousand dollars' worth?

A. Yes, sir; about a thousand dollars' worth.

Q. Do you buy goods East?

86 A. Yes, sir; I bought of the biggest houses in the country.

Q. A thousand dollars' worth?

A. A little less than that. I bought it in my line of business.

Q. Do you keep gents' furnishing goods?

A. Yes, sir; I keep a few.

Q. You haven't been keeping them?

A. No, sir.
Q. Boots and shoes?
A. No, sir.
Q. Hats and caps?
A. No, sir.
Q. You haven't been in the regular business of clothing and gents' furnishing goods since 1879?
A. Yes, sir.
Q. And then you were engaged for somebody else?
A. Yes, sir.

Counsel for complainants still insists on his objection.

Counsel for "May & Hirsch" proceed with their direct examination.

Q. I will ask you to state whether or not you are now engaged in business and handling clothing.
A. Yes, sir.
Q. And how long have you been so engaged at one time recently?
A. I have been for six or seven years; you might say for eight years previous before I came here.
Q. And how long in this town have you been engaged in business that required you to handle gents' furnishing goods and clothing?
A. Five or six months, and previous to that I always looked over stock in this town.
Q. What do you mean by looking over it, did you have any say so about it?
A. Yes, sir; I had some investments and looked the stock over to see if it was always there.
Q. You had some money invested in that kind of business?
A. Yes, sir.
87 Q. Here since you have been in Leadville?
A. Yes, sir.
Q. And about how long?
A. About two years and a half.
Q. Now, state, if you please, what your estimate of the value of goods sold by May & Hirsch in this store you speak of——

Objected to because the witness has not shown himself competent to testify to the value of the stock of goods.

A. Well, at that time I considered the stock worth from fifteen to eighteen thousand dollars.
Q. I will ask you to state whether you was present at the time of the sale of this stock of goods under the mortgage.
A. Yes, sir.
Q. State, if you please, whether or not you went there with the view of buying that stock of goods.
A. Yes, sir; I went there to buy them if I could buy them very cheap.
Q. You saw that sale take place, did you not?

A. Yes, sir.

Q. I will ask you to state whether or not on that occasion there was a fair and ample opportunity for everybody to bid on that stock of goods.

A. Yes, sir.

Q. Had you previous to that time seen any advertisement that the sale would take place?

A. I think I did. I don't recollect, though.

Q. State whether or not you recollect having seen such an advertisement in both the Chronicle and Herald-Democrat, published in this city.

A. I don't positively recollect that. I expect I have seen it, but I can't say sure.

Q. You went there at the time of the sale for the purpose of buying under the sale which took place?

A. Yes, sir.

Q. Did you buy?

A. No, sir.

Q. Why did you not buy?

88 Objected to as being incompetent and immaterial.

A. It went a little higher than I wanted to go.

Cross-examination by Judge DECKER:

Q. You say it was worth from fifteen to eighteen thousand dollars?

A. Yes, sir.

Q. That is wholesale prices?

A. Well, a rough estimate of the wholesale and retail prices would be fifteen to eighteen thousand dollars; A. yes, sir.

Q. Did you see an invoice of the stock of goods there?

A. I saw one lying there; I looked it over a little bit.

Q. Who showed it to you?

A. I think the sheriff had it, the deputy sheriff.

Q. Did you examine it for the purpose of determining the value?

A. No, sir; I had been buying clothes before.

Q. Did you examine that invoice?

A. Yes, sir.

Q. Are you certain that it was an invoice of that stock of goods?

A. I am pretty sure it was. I saw it lying there in the office.

Q. With the cost price on? Did it show the cost price of the goods?

A. I can't tell you, sir.

Q. You don't know what it showed?

A. I can't tell positively about that; no, sir.

Q. Do you know what the goods sold for?

A. Yes, sir.

Q. What was it?

A. I think it was twenty thousand one hundred dollars or two hundred dollars.

Q. Over twenty thousand?
A. Yes, sir.
Q. The whole stock was sold in bulk?
A. Yes, sir; there was some previous offers.

89 SAMUEL BERRY, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. State your name, age, residence, and occupation.
A. Samuel Berry; age, 34; occupation, clothing, boots, and shoes; residence, Leadville, Lake county, Colo.
Q. What business are you engaged in?
A. Boots and shoes and clothing business.
Q. Do you handle gents' furnishing goods?
A. Yes, sir.
Q. How long have you been engaged in that business in the city of Leadville?
A. Since 1879—eight years.
Q. Are you acquainted with the value of such goods as gents' clothing, furnishing goods, hats, and caps, etc?
A. Yes, sir.
Q. Were you acquainted with them in March of last year—such values?
A. Yes, sir.
Q. And engaged in that business at that time in this town?
A. Yes, sir.
Q. Are you acquainted with the defendants in this case, David May, Adolph Hirsch, and Sam. Rich?
A. Yes, sir.
Q. Do you know the stock of goods that Sam. Rich had on Harrison Ave., in what was known as the Lion clothing-house about that time in March?
A. I have been in there once in awhile.
Q. Do you know how long he had been running that business there?
A. I know Mr. Rich was in business there since I am here.
Q. Did you make any examination at any time of that stock of goods owned by Rich, so as to ascertain its value or approximately?
A. Do you mean the stock of goods offered for sale afterwards?
Q. Yes, sir.
90 A. I looked over it in the morning when it was offered for sale at auction.
Q. You mean at the time May and Hirsch sold under their mortgage?
A. Yes, sir.
Q. You looked over it on that morning the sale took place?
A. Yes, sir.
Q. State, if you please, what, in your judgment, was the value of that stock of goods that morning.
A. It is hard to tell what it was worth simply looking through;

but, in my estimation, it ought to have been worth eighteen to twenty thousand dollars.

Cross-examination by Judge DECKER:

Q. You are conducting business for yourself?

A. Yes, sir.

Q. Is your business run in the name of Sam. Berry?

A. Berry & Anglerman. I have a partner.

Q. How did you make an estimate of the value of that stock of goods?

A. Well, that is done by comparison more than by anything else. I went through the stock and saw how high the piles were and what kind of clothing.

Q. The only way you made an estimate of the value was by simply looking at the piles of clothing and gents' furnishing goods, piles of clothing on the counters or tables and gents' furnishing goods on the shelves, just casually looking over them and passing along through; that is the way you did?

A. Yes, sir.

Q. You had no other means of assisting you in determining the value?

A. No, I didn't; I had no other means.

Q. Now, when you say eighteen to twenty thousand dollars, do you mean that to be the wholesale value of the stock?

A. Well, that would be the value if I was going to buy; that is as high as I would go.

91 Q. That is your own personal estimate of it?

A. Yes, sir.

Q. You don't mean to say that that stock of goods was not worth more at wholesale prices?

A. It may have been worth more; but that is all I would give.

Q. When you say the market value of that stock of goods was from eighteen to twenty thousand dollars you mean to say that that was all you would give?

A. I mean to say that was all a creditor would give to make a few dollars.

Q. Now, let me ask you again, is that your estimate of the wholesale of that stock of goods—the cost price of that stock of goods?

A. I can't tell what Mr. Rich paid for his goods.

Q. I am asking if that was your estimate—if that was the cost price of that stock of goods.

A. Well, the store is not quite as long as mine, and, judging from the stock of goods, the character and what it would average, I should think it would cost twenty thousand dollars—what was in there—by comparison with what I have in my store.

Q. What is the depth of your store?

A. It is longer than that; 90 feet long.

Q. How wide is it?

A. Twenty-five feet.

Q. And then you estimate the cost value of that stock of goods at twenty thousand dollars?

A. Yes, sir.
Q. Is that correct?
A. Yes, sir.

92 FRED. BUTLER, a witness produced, sworn, and examined on the part of the defendants May & Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. What is your name, age, residence, and occupation?
A. Fred. Butler; age, 30; residence, Leadville, Lake county, Colorado; occupation, merchant.
Q. Have you been engaged at any time in the clothing business in this town?
A. Yes, sir; I have.
Q. Handling gents' clothing and furnishing goods, hats, caps, etc.?
A. Yes, sir.
Q. For how long a time?
A. About three years.
Q. Are you acquainted with David May, Adolph Hirsch, and Sam. Rich?
A. Yes, sir.
Q. Do you know the place of business formerly occupied by Sam. Rich?
A. I do.
Q. Do you recollect the occasion of the stock of goods formerly owned by Sam. Rich being sold out under a mortgage by May and Hirsch?
A. Yes, sir; I do.
Q. Were you present at that sale?
A. No, sir; I was not present.
Q. Not there at the time the sale took place?
A. No, sir.
Q. Had you at any time before the sale took place made an examination of that stock of goods?
A. Well, I was in there and took a casual glance around and went around in the stock; yes, sir.
Q. Did you examine the goods sufficiently to enable you to *to* form an estimate of their value?
A. Well, pretty near; you may say I did.
Q. Are you acquainted with the value of gents' clothing and furnishing goods, including hats, caps, etc.?
A. Yes, sir; I think I am.
Q. Were you acquainted with such value in March last?
A. I was.

93 Q. Have you at any time previous to March last been engaged in business that required you to sell and buy such goods as that?
A. Clothing or furnishing goods?
Q. Both or either.

A. I had been out of the clothing — some time, but handled furnishing goods up to that date.

Q. And up to the present date, had you?

A. Yes, sir.

Q. How long have you been out of the clothing business?

A. Since 1883, up to that time.

Q. Since then you haven't dealt in clothing?

A. No, sir.

Q. Were you at the store about that time, in March, when an invoic was taken of the stock?

A. I was there during the time while they were invoicing.

Q. Who was doing it?

A. There was several clerks; Monheimer, I believe, was there, and Mr. Shoenberg—Mr. Joseph Shoenberg.

Q. Was that before the sale of the goods by Mr. May and Hirsch of afterwards?

A. Before.

Q. And you were there present at the time they were taking this invoice?

A. During that time, looking around and paying a friendly visit; somewhat interested, slightly.

Q. You supposed the goods were to be sold, did you not?

A. Yes, sir.

Q. Did you pay any attention to the stock with reference to its value or think of its value?

A. Yes, sir; I did.

Q. Now state, if you please, what you estimate it to be worth.

Objected to, as he has not shown himself competent to testify to the value of gents' clothing.

Q. State what they were worth in the market at that time.

A. Well——

94 Q. In other words, a reasonable price for a man to pay for that stock of goods at that time?

A. I thought about twenty-two or twenty-three thousand dollars would be a fair price.

Cross-examination by Judge DECKER:

Q. When you say twenty-two or twenty-three thousand dollars do you mean that is the estimated cost price of the goods?

A. Cost price? No, sir.

Q. What would you estimate that stock of goods at its cost price—just an estimate of it?

A. Thirty thousand dollars.

Q. Was the stock in good condition?

A. Fair condition.

Q. When did you examine the invoice they had taken?

A. Previous to the sale, two or three days probably.

Q. Any careful examination of it did you make?

A. What would you call a careful examination?

Q. Make a careful estimate as to the value of the stock.

A. I can't say I figured everything exactly; I went around.

Q. Did you simply see it, look at it, or look through the different pages of the invoice that was taken?

A. Yes, sir; I went through partly.

Q. Did it contain the cost price of the goods?

A. Not through the invoice; I didn't go through that; I didn't see the invoice at all.

Q. But you went through the stock—looked at it thoroughly?

A. Yes, sir; I did.

Q. And from looking all through the stock you would say the cost price of that stock would be about thirty thousand dollars; and on what would you estimate its value at twenty-two or twenty-three thousand dollars?

95 A. In that neighborhood, if I was to buy it.

Q. At forced sale?

A. At forced sale.

Q. You mean to say if you bought it you would be willing to buy it at forced sale without having an invoice of the stock; you was willing to buy it from the examination you made and pay twenty-two or twenty-three thousand dollars?

A. I didn't say I would be willing to buy it in that neighborhood.

Redirect examination:

Q. Now, do I understand you as saying the stock would cost thirty thousand dollars; if the stock would be new it would be worth that on the market new?

A. The way I understand him, if the stock was new it would be worth that on the market.

Q. To go to the wholesale dealers and buy?

A. Yes, sir; as I understand it.

Q. But as it was then and located where it was?

A. Yes, sir; I don't think it would be worth more than I state—twenty-two or twenty-three thousand dollars.

Q. How long would it take, about, and what would it cost to sell that stock of goods out just as you found it, at retail?

A. Probably a couple of months.

Q. Provided you should sell that stock of goods out at retail, without replenishing the stock nor keeping up the stock and carry on the business, would it have brought at retail, in your judgment, as much as twenty-three or twenty-four thousand dollars without filling up—without keeping the stock up?

A. It might have brought that.

Q. Would it have brought any more, do you think?

A. No; I don't think it would have brought any more.

96 Q. About what expense would be necessary in exposing that stock of goods in the manner I last mentioned at retail?

A. The expense of selling it?

Q. Yes, sir; all the expenses—rent, gas, and everything; advertising, and all that sort of thing.

A. About fifteen hundred dollars a month.
Q. And it would take about three months?
A. About two months. While I say that, of course you understand I mean to say that to have good trade right along—steady good trade would do that.
Q. Would you have that steady good trade if you didn't replenish your stock?
A. I don't know. I don't think you would.
Q. You think not?
A. No.

Redirect examination:

Q. Who purchased that stock of goods?
A. I understood Mr. Shoenberg; that is what I understood.
Q. The same man you saw in there taking the invoice?
A. Yes, sir.

Recross-examination:

Q. It is suggested to refresh your memory: Are you positive that Shoenberg was there at the time the invoice was being taken, at all?
A. That Mr. Shoenberg was there, if I am not mistaken. I may be mistaken. I can't recollect now. The time they were taking up stock I thought he was there. I don't believe I would swear to that.
Q. Don't you remember that Shoenberg arrived here on the morning of the sale, from Kansas City?
A. Yes, sir; I believe that is right.
97 Q. He was not here before that?
A. That is right.

Redirect examination:

Q. You swear to that as refreshing your recollection?
A. Yes, sir; that is right.
Q. Was he not here and then went away and came back again on the morning that the sale took place?
A. I don't think I saw him before.
Q. Did you *here* of his being here?
A. No, sir.
Q. Then you think he came the morning the sale took place?
A. Yes, sir; I think so.
Q. What time in the day did the sale take place?
A. Early in the morning; ten or eleven o'clock in the forenoon. I was not there.

And thereupon the further taking of testimony was adjourned to 9.30 a. m., October 26, 1887.

Parties met pursuant to adjournment, and thereupon—

98 EDWARD STRAUSS, a witness produced, sworn, and examined on the part of defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. Mr. Strauss, state your age, place of residence, and occupation.

A. 38 years old; I live in Denver; make that my headquarters, and represent Brown Brothers and Company and the Oregon City woolen mills.

Q. In what business do you represent these parties; what business do they conduct?

A. They are manufacturers of woolens; Brown Brothers and Company own the Oregon City woolen mills and are a manufacturing company of the products of the corporation; we sell clothing, furnishing goods, etc., socks, suspenders.

Q. Are you acquainted with the value of gents' furnishing goods and such things as ordinarily belong to what is designated as a clothing store—acquainted with the value of such goods in this market?

A. I think so.

Q. State whether or not you are selling them for a house; and, if so, how long you have been so doing.

A. I have been selling these goods for five years, and I have been myself in the retail clothing business twenty years prior to that.

Q. Have you been selling such goods in Leadville?

A. I have for my house in this town.

Q. Are you acquainted with the defendants May and Hirsch?

A. Yes, sir.

Q. How long have you known them respectively?

A. I have known them since I have been in the State—since 1880.

Q. Were you acquainted with the stock of goods formerly owned by the defendant Rich on Harrison avenue and called the Lion clothing-house?

A. Yes, sir.

99 Q. Did you at any time in the month of March last make any examination of that stock to see what it consisted of?

A. I was here at the time Mr. May took an inventory of the stock, and I assisted in doing so.

Q. Assisted in making the inventory?

A. Yes, sir.

Q. I will ask you to state, if you please, how that inventory was made; who handled the goods and took down the number of suits or the number of boxes of goods, and who kept an account of the inventory as it was being made?

A. Well, if I remember right, it was Mr. May's brother-in-law—I can't think of his name—that took down the inventory; I mean Mr. Hirsch's relative, Mr. Ney; Mr. Hirsch's book-keeper, I mean.

Q. Who helped to take the goods down to look at them; the prices, etc.?

A. Mr. May's clerks and a young man by the name of Strauss, and I helped to take up some, and Mr. Monheimer assisted.

Q. State whether or not in making that inventory you were guided by the marks on the goods in order to estimate the price, as to what the price was?

A. They were guided by the marks and their judgment both, which is the proper way of taking an inventory.

Q. That, you say, is the proper way of taking an inventory?

A. Yes, sir. As explanation of that I will say you may buy an article to-day of me; it may be a fancy price; the market price of that article through forced sale reduces it almost beyond any condition; an article at a forced sale or to sell out at auction will make a great reduction on the value of that article. You might almost compare it in the same way if you buy a necktie in a retail store at a dollar and a quarter, you naturally know it is not worth
100 a dollar and a quarter if you try to dispose of it to a man that don't want it.

Q. If you put it on the market?

A. Then it will come down to the actual manufacturer's value.

Q. As to the new goods, were you not almost entirely governed by the cost price of the goods, the mark on the goods?

A. The goods were in packages not broken. They were taken at the cost price.

Q. And that was the market value of the goods?

A. That was the market value of the goods, I suppose.

Q. Now, Mr. Strauss, what, in your judgment, was the wholesale value of that stock of goods at that time to sell it at wholesale, if you had to sell it?

A. The entire stock—I knew what it inventoried; I can't remember, of course. I have had a good deal to do in my business in the taking of inventories, and I claim that I have a very fair judgment in regard to stocks as they go; in fact, when a man takes an inventory every year twice, for twenty years, it comes a matter of almost instinct as to the value of the stock.

Objected to this answer as not responsive to the question.

A. I may have had an idea at that time. I know how much the stock inventoried.

Q. Now, then, tell us what your estimate of the value of the stock of goods was—the whole thing.

A. I can't remember that exactly. I know what the stock inventoried at.

Q. What did it inventory at?

A. It inventoried at between twenty-three and twenty-four thousand dollars.

Q. In your judgment, was the stock of goods worth any more than it inventoried to sell it in bulk as it was there in the store?

101 A. That was a very fair price for it—that is, for a man to purchase it.

Q. Now, do you recollect the occasion of that stock of goods being sold under the mortgage held by May and Hirsch?

A. Yes, sir.

Q. Were you present at the time of the sale?

A. Yes, sir.

Q. Present at the time bids were being made?

A. Yes, sir.

Q. State in your own way how that sale was made.

A. It was strictly an auction sale; I made a bid on it myself.

Q. How much was your bid?

A. I bid nineteen thousand five hundred dollars.

Q. Did some one else bid more than that?

A. Yes, sir.

Q. Who?

A. Mr. Sands.

Q. Do you remember his bid?

A. He bid up to twenty thousand dollars.

Q. Did any one bid more than that?

A. Yes, sir; Mr. Shoenberg.

Q. How much do you recollect was his bid?

A. If I remember right, the bid was over twenty thousand; twenty thousand one hundred dollars; something like that.

Q. Was any bid made subsequent to that?

A. After that, I don't know; I only remember that Mr. Shoenberg bought the stock; I don't remember the exact figures.

Q. Do you remember whether the sale was held open by the auctioneer after Shoenberg made his bid of twenty thousand one hundred dollars—if it was held open?

A. If I remember distinctly, Mr. Sands, who stood near me, or somebody was bidding for Mr. Sands.

Q. Charlie Cavender?

A. Yes, sir; and he wanted to bid more and Sands refused to go higher than Shoenberg's bid.

Q. Did any one else bid any higher than Shoenberg bid?

A. No, sir.

Q. Were there many people, merchants of the city, there?

102 A. Quite a crowd.

Q. Some fifty or sixty people there?

A. The store was pretty well filled. Of course there were many interested and some were not.

Q. State whether or not an experiment was not made trying to sell the goods in parcel and it was found they would not bring so much in that way, and then sold in bulk, it being the best judgment that it would bring more money that way.

A. They attempted to sell the goods at retail, but that wouldn't work, and then they were trying to sell in separate portions and they considered that selling in bulk would be the best.

Q. How long had you been in town previous to that sale?

A. I came here at the time they were selling at retail—at the time the mortgagee took charge of it. I left and came here at the date it was advertised for sale.

Q. You were acquainted with the circumstances of the mortgage being given and the stock turned over to May & Hirsch?

A. Yes, sir.

Q. And you were acquainted with the matter of the sale?

A. Yes, sir; to my sorrow.

Q. Rich was indebted to your concern?

A. Yes, sir; and is yet.

Q. I will ask you to state whether or not, in your judgment, the goods were handled and sold by the mortgagees, May and Hirsch, to the best advantage and in the manner to get the most money the mortgagees could get out of it.

Objected to as being incompetent and calling for the opinion of the witness. It is not calling for a statement of the facts, merely the conclusion of the witness.

A. Why, I think they got a very fair price for the stock.

102 Cross-examination by Judge DECKER:

Q. What was the amount of the indebtedness due to your house from Rich?

A. In the vicinity of eleven hundred dollars. I don't know the exact amount.

Q. How long did they conduct the retail business after May and Hirsch took charge of it?

A. I think one day.

Q. One day?

A. Perhaps part of another.

Q. Probably a day and a half?

A. Perhaps a day and a half.

Q. And they determined at that time that they could not sell the goods at retail?

A. Determined that it was not advantageous.

Q. That opinion that they would not be able to succeed in selling at retail you got from them; what they said?

A. From observation; they did not make a confident of me; they simply knew. I was present when they closed the store and put the sign up the stock was being sold at auction.

Q. And the fact that they would be unsuccessful in selling at retail was from a statement they made to you?

A. No; I don't think that; as I say to you, the store was closed and a notice published that the stock would be sold at auction.

Q. I am now asking you about the time they were selling at retail that notice was not up that they would sell at auction while selling at retail?

A. No, sir.

Q. Didn't you ascertain from them and the only knowledge that you got from them from statement to you that they could not succeed in selling the goods at retail?

A. I suppose something of that kind. I can't state whether by them or somebody else; I don't know. They were selling at retail

and afterwards advertised to sell at auction, *it* naturally inferred that it was not satisfactory or profitable.

104 Q. You say you were there while the invoice was being taken?

A. Yes, sir.

Q. There the whole time?

A. Yes, sir.

Q. How long were they engaged in taking the invoice?

A. Two days, I think.

Q. Was that invoice taken after they had stopped selling at retail?

A. Before they sold at retail.

Q. How long after they took possession of the store from Rich did they commence selling at retail?

A. Well, I should judge two days after; after they got through taking the inventory; of course, I don't remember exactly.

Q. Well, about two days?

A. About two days.

Q. While you were taking the invoice of the stock the store was closed, was it not?

A. Yes, sir.

Q. Now, state who and all were present while the invoice was being taken.

A. There was Hirsch, Mr. May, and a young man named Stearns, Mr. Ney, myself, and part of the time both Mr. Mendelsmors assisted.

Q. Both of them?

A. Yes, sir.

Q. Any one else any part of the time?

A. I think there were other parties there. I don't remember exactly. I am confident other parties were there.

Q. Do you remember Mr. Shoenberg being there?

A. Mr. Shoenberg was there at that time.

Q. During any time the invoice was being taken?

A. I think not. I don't think Mr. Shoenberg was in Leadville at the time.

Q. What amount of new goods were in that stock at the time the invoice was taken?

A. Well, I hardly knew the stock.

Q. Your best judgment?

105 A. I judge there was about twelve thousand dollars' worth.

Q. What I mean by new goods were goods that had recently come in.

A. That I can't tell; that I don't know. It would be hard to tell. When I speak of new goods I speak of such goods as come in taking the inventory that were up to the value of the market; they may have been new goods.

Q. What was the value of the goods that were at that time in the original packages?

A. That I can't tell you exactly, because the only value I could tell were the goods I sold myself, which *which* were in the original

packages. I should judge there was six or eight hundred dollars' worth of my own goods that particularly came to my notice, in packages. Trimble & Hunter attached these goods.

Q. Didn't you find others?

A. There were other goods there.

Q. Can you give any judgment of them?

A. No man could unless he was notified at the time that the question would be asked two or three months later and post himself.

Q. You say that there were twelve thousand dollars' worth of goods that you valued at the original cost—about that?

A. I said there was about. You forced upon me the question to give an estimate. I might have said one hundred dollars, or just one. You forced a judgment.

Q. I want your best opinion.

A. Even at that it would be guess-work, as any stock of goods selling at twenty-three thousand dollars as an average, a man might say that was a pretty fair price, or twenty thousand dollars a pretty fair price for the stock of goods that is made up of fine fancy goods of different value, and——

106 Q. You are getting out of my question.

A. You asked this question: How many new goods did you think there was in the store? I thought it would be twelve thousand dollars.

Q. In arriving at the value of the balance of that stock aside from the new goods, which you estimated at twelve thousand dollars, how do you fix the price or how was it fixed in the inventory taken?

A. According to the judgment of the appraisers, just the same as though you owned that stock——

Q. All I want to know is the fact.

A. That is the fact.

Q. It is then determined according to the judgment of the appraisers. Mr. May appraised some; who appraised the balance?

A. Yes, sir; Mr. Monheimer appraised some.

Q. Then in determining the value of that balance over and above the twelve thousand dollars, which you make an estimate of, that is not the exact amount, but simply your best judgment; it was not fixed according to the cost price, but simply according to their judgment of what it was?

A. Yes, sir.

107 L. H. JOHNSTON, a witness produced, sworn, and examined on the part of the defendants May & Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. What is your age, residence, and occupation?

A. Age, 28; residence, Leadville, Lake county, Colorado; occupation, merchant.

Q. What sort of a merchant? Dealing in what character of goods?

A. Hats and furnishing goods.

Q. Men's furnishing goods?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. In this new way only about a month. Heretofore I have been in the clothing, hats, etc., for about two years.

Q. In this town?

A. Yes, sir; corner of 5th and Harrison Ave.

Q. Where were you engaged, if at all, in business in the month of March last?

A. 500 Harrison avenue.

Q. In this city?

A. Yes, sir.

Q. Are you acquainted with David May, Adolph Hirsch, and Sam. Rich?

A. I am acquainted with Dave May and Mr. Hirsch.

Q. And Rich?

A. Yes, sir.

Q. Were you acquainted in the month of March last with the stock of goods formerly owned by the defendant Rich at his place known as the Lion clothing-house, on Harrison avenue, in this city?

A. Yes, sir; I knew the house.

Q. Do you know the occasion of these goods being mortgaged by Rich to May & Hirsch and possession of them delivered to them?

A. I know of the occasion from what I have heard.

Q. Were you in the store after May and Hirsch took possession under the mortgage?

A. Yes, sir; I was.

Q. Did you assist in taking an invoice of the goods the day after the mortgage was given?

108 A. I assisted in taking an invoice of the hats one Sunday afternoon. I have no recollection now whether it was the day after the mortgage was given or not.

Q. It was after May and Hirsch were in possession?

A. After they were in—had possession of the store.

Q. You handled the hats?

A. I can't say I handled them. I took the amounts down as they were given to me.

Q. Who else assisted in taking an inventory of the stock of goods?

A. The gentleman that assisted me—his name was Limline.

Q. Where is he now?

A. He is dead.

Q. What do you mean by calling off to you?

A. He gave me the amount of hats and price and I put them down in a memorandum.

Q. How did he arrive at the price, if you know?

A. I suppose he looked at the cost-mark.

Q. How did he look at the price?

A. At the cost-mark.

Q. Did you see him look at the cost-mark?

A. Yes, sir.

Q. And he gave you the cost-mark price?

A. Yes, sir.

Q. And you put it down?

A. Yes, sir; on a memorandum book; inventory book was what it was used for.

Q. I will ask you to state whether or not David May did not give you the cost-mark so that you knew it and understood it.

A. No, sir; I don't believe he did. Yes, he did—he did, since I come to think.

Q. So you knew when Limline called off to you—you knew the cost-mark?

A. I did not look at the cost-mark every time, as I supposed he would call it off, and believe he did, as they were marked; consequently as he called them off I didn't — to see if it was correct, but was satisfied in my own mind that it was.

Q. How long were you engaged in the store there in that occupation of taking the inventory with other parties?

109 A. Three or four hours one Sunday afternoon.

Q. You were not there during all the time the inventory was being taken of the whole stock?

A. No, sir; only for that length of time.

Q. As I understand you, you handled the hats?

A. A greater portion of them; not all of them.

Q. I will ask you to state whether or not you took the boxes as standing, or did you count the actual number of hats in the boxes.

A. The hats were counted.

Q. Each separate hat counted?

A. Yes, sir; I think they were all—that is, as far as I seen and knew.

Q. Now, are you acquainted with the value of such a stock of goods as that, at that time in March last?

A. No, sir; I can't say that I am, as I don't know what to value that stock at. I did not look it over, and was not thoroughly acquainted with what was in there, and was not there long enough to make myself acquainted.

Q. Do you remember what the inventory was as far as the hats was concerned?

A. No, sir; I never saw the footing.

Q. Who was the inventory turned over to so as to make a complete inventory of the entire stock, and state if you know it was turned over to this man Ney?

A. No, sir; I supposed it was turned over to Mr. May. As far as I know it was turned over to Mr. May.

Q. Do you know that the inventory, as far as you took it, as to the hats was correct as to the number?

A. I believe it was.

Q. The number of hats and cost-mark?

A. I believe it was, as far as I know.

110 Cross-examination by Judge DECKER:

Q. You didn't examine the cost-marks when they were given to you?
A. No, sir; not at all the times; I did occasionally.
Q. It was only occasional?
A. Yes, sir.
Q. What you put down was simply what was called to you?
A. Yes, sir.
Q. And you simply entered it in the invoice book?
A. Yes, sir; as it was given to me.

111 J. T. CASH, recalled on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. I believe that you have already stated that you are acquainted with the stock of goods formerly owned by Sam. Rich, on Harrison avenue, in this city?
A. No; I don't believe I have stated that yet.
Q. You know there was such a stock?
A. Yes, sir.
Q. State if you knew of the circumstance of that stock being mortgaged to May and Hirsch and turned over to them.
A. I knew nothing about it.
Q. You knew such a circumstance?
A. I knew it occurred since.
Q. State whether or not after May and Hirsch were in possession you assisted in making an inventory.
A. Yes, sir; I did.
Q. Who else assisted in that?
A. Well, there was a good many; there was Montgomery, Mr. May, Lou. Johnson, myself——
Q. Mr. Strauss, was he there?
A. Yes, sir; he was there. I believe he assisted, too, and a man named Lemlitz, who is dead now, and a young man named Selig. I don't know; there may have been one or two others.
Q. What did you do towards making the inventory?
A. I went over a good deal of the furnishing goods. I didn't go through much clothing. I didn't go through any, I don't believe, unless it was a few overcoats.
Q. How was the estimate value of the goods taken, as far as you had to do with it? How did you arrive at the value?
A. Just at what they cost.
Q. By the cost-mark on the goods?
A. Not the cost-mark; what they cost.
112 Q. What they actually had cost?
A. Yes, sir; before they were marked. There is always ten per cent. added, as a general thing, for freight.
Q. You added ten per cent. for freight to the cost?
A. Not in all. Some we did—in stockings we did.

Q. On stockings you added ten per cent. for freight and other goods you did not?

A. Yes, sir; California goods we did not.

Q. Do you know the value of such goods as you handled in this market?

A. Yes, sir.

Q. State whether or not in the making of that inventory as it was made at that time a fair and reasonable valuation was put upon the goods that you handled.

A. Yes, sir; on what I handled.

Q. State whether or not the goods, so far as you handled them, were properly and accurately counted.

Objected to, as the question does not request the witness to state what he did.

A. Yes, sir; they were.

Q. I will ask you to state whether or not at the time you were assisting in making the inventory you made an accurate count or calculation of the number of the several species of goods you handled in making the invoice.

A. Yes, sir.

Q. Was that put down by any one on any piece of paper or not?

Objected to as leading. Let him state what he did.

Q. State what was done by any one, and who kept any minutes of the counting and pricing of the goods?

A. Well, I would go through the goods and give them over to Mr. Ney. He had the book there and would make an entry.

113 Q. That is, Rudolph Ney, Hirsch's book-keeper?

A. Yes, sir.

Q. Has Mr. Ney kept that since, as far as you know?

A. That I don't know.

Q. You don't know of anybody else having it?

A. No, sir.

Cross-examination by Judge DECKER:

Q. You say you assisted in taking the invoice of furnishing goods; some of the furnishing goods. Did you of all of them?

A. No; not all of them. I assisted in taking all of them.

Q. Of the clothing?

A. Not clothing; some of the overcoats.

Q. How much of the goods you invoiced there came in between the time Mr. Rich went East, in the middle of February, and the time of this transfer from Rich to May and Hirsch?

A. I invoiced pretty near all of the furnishing goods that he sent.

Q. And the clothing?

A. I didn't handle any clothing.

Q. You know of the goods that came in afterwards, did you not?

A. Yes, sir; I knew of the goods that came in afterwards. I handled and marked them all.

Q. The goods that came in from the East after Mr. Rich went East, in February of this year, were there in the store when they were turned over to May and Hirsch?

A. Yes, sir; they were not sold. All that stock he sent was in the store.

Q. Did you receive invoices of the stock of the different lots of goods he purchased while he was East?

A. I got all the bills; yes, sir.

Q. What became of them?

A. I don't know. They were in the office the last time I saw them.

Q. Did anybody come over to get them at different times?

A. I don't know.

114 Q. Don't you know of anybody coming there to examine the invoices during the absence of Mr. Rich?

A. Mr. Ney came there.

Q. He examined the invoices?

A. Yes, sir.

Q. Take them away with him?

A. I believe he took them away one morning.

Q. Where did he take them, do you know?

A. I can't say.

Q. Took them away one morning—more than once?

A. Not more than once that I know of, and I would know it, I guess.

Q. How long did he have them?

A. I believe he brought them back the same day.

Q. Were all the goods that you took an invoice of, that you insisted in taking an invoice of, taken at the cost price as they appeared on the goods?

A. Yes, sir.

Q. Were the new goods there--stable goods—in good condition?

A. The goods I took?

Q. That is the invoice that you assisted in?

A. Yes, sir; that is, all furnishing goods were.

Q. That is all you took an invoice of?

A. Yes, sir; and a few overcoats.

Q. Were they staple goods?

A. They were a little shelf-worn; some of them.

Q. Did you take them at the cost price?

A. I don't remember what they were taken at; Selig took them. I assisted in stacking them up and taking them down.

Q. So that you really don't know what they were taken at?

A. No, sir.

115 SOL. STRAUSS, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. State your age, residence, and occupation.

A. I am 31 years old; reside in Leadville, Lake county, Colorado. I am a clothing man.

Q. I will ask you to state if you know Adolph Hirsch, David May, and Sam. Rich, the defendants in this suit.

A. Yes, sir.

Q. Do you know of the fact and circumstance of Mr. May and Hirsch taking possession of the stock of goods formerly owned by Sam. Rich, on Harrison avenue, in this city?

A. Yes, sir; I was working there.

Q. Do you remember the taking of the inventory on these goods after May and Hirsch took possession?

A. Yes, sir.

Q. Did you assist in doing that?

A. Yes, sir; myself and Mr. May.

Q. Was Mr. Strauss there and Cash?

A. Yes, sir.

Q. Cash was there?

A. Yes, sir, and Mr. Selig.

Q. Was Lemline, the man who died there, assisting?

A. I can't remember now. I don't know.

Q. Now, what part did you take in the making of that inventory?

A. Clothing and a part of the furnishing goods.

Q. Do you understand that business and know how to do it?

A. Yes, sir; I have done it before.

Q. You had done it before?

A. Yes, sir.

Q. Now, how was the invoice taken, as far as you assisted in it? Who helped you and what did you do?

A. Mr. Selig helped me. We was together.

Q. Do you know where Mr. Selig is now?

A. No, sir. He left here about two months ago.

116 Q. Went back to his home?

A. I don't know.

Q. You don't know where he went?

A. No, sir.

Q. Just proceed to tell how you and Mr. Selig made that inventory; what each of you did, and how you did it.

A. We counted the goods and sorted the goods; the new goods we took at cost, less ten per cent., as they were marked, and the furnishing goods.

Q. How did you fix the value on them?

A. The same as clothing; we had the eastern cost; of course, we had some old-style goods we did not take at eastern prices.

Q. How did you take them?

A. As what we could sell them for.

Q. Did you fix the value according — what they could be sold for or bought for?

A. Yes, sir.

Q. Was your endeavor at that time to find out as accurately as possible the good- you we- invoicing?

A. Yes, sir; we took every piece of goods in consideration.

Q. Did you count them?

A. Yes, sir.

Q. Who took down any minute of the goods and prices, if you know?

A. Part of it Mr. Selig and part of it I did.

Q. What did you do with the minute you had?

A. I don't know; I footed up the paper and gave it to Mr. Selig.

Q. Did you find it accurate and make an accurate count of the goods?

A. No, sir; I didn't.

Q. First you counted them; didn't you know how many goods there were; didn't you count the suits?

A. Certainly we counted the suits.

Q. So as to know what you were invoicing?

A. Yes, sir.

Q. Y-u didn't leave any uninvoiced, did you?

A. No, sir; we commenced and went through it.

Q. I will ask you to state where you slept and stayed the
117 night of the transfer from Rich to May and Hirsch.

A. I stayed in Rich's store.

Q. State whether or not you remained there and had charge of the store.

A. Yes, sir.

Q. Up to the sale?

A. Yes, sir.

Q. State whether or not any goods were taken out of there by anybody or whether they remained there.

A. No, sir.

Cross-examination by Judge DECKER:

Q. What time did May and Hirsch take possession of that stock of goods from Mr. Rich?

A. I can't remember the date.

Q. Was it morning or night?

A. I don't know. Mr. May told me to go over and sleep there?

Q. In the evening?

A. Yes, sir; I can't remember the time.

Q. And you slept there that night?

A. Yes, sir; and that is all I know.

Q. Where did you sleep?

A. In the store.

Q. Where in the store?

A. In the middle of the store.

Q. On the clothing?

A. Yes, sir.

Q. Did you have a bed made on the floor or on top of the clothing?
A. I had it made on the floor.
Q. Was it near the counters or was it in the center of the floor?
A. Well, it was between the counters.
Q. Between the counters?
A. Yes, sir.
Q. Was it between the counters and shelving on the wall?
A. Yes, sir.
Q. That is where you slept?
A. Yes, sir.
Q. And half way back from the front or to the rear of the store?
118 A. In the middle of the store; I can't remember exactly the place I slept, but about the middle of the floor.
Q. Did you sleep there any other time?
A. As long as we kept that store, until we closed up there.
Q. Who had the keys of the store?
A. I had keys.
Q. Who else had keys?
A. I don't know. I had the keys. As far as I know, I don't think anybody else had keys. Mr. May had a key. I don't remember.
Q. Did you help to take an invoice of all the clothing?
A. Yes, sir.
Q. Of all the clothing?
A. Yes, sir.
Q. How many men helped you?
A. In the clothing myself and another man, named Selig.
Q. You were the only two persons that took an invoice of the clothing then, were you?
A. I believe we were.
Q. You were the only two that took an invoice of the clothing?
A. I can't remember.
Q. Is that your best judgment?
A. My best judgment. It is so long I can't remember. Maybe some of the other boys invoiced a few goods.
Q. You commenced at the front?
A. Yes, sir.
Q. The goods were on tables in the center of the store?
A. Yes, sir.
Q. The clothing was?
A. Yes, sir.
Q. And you invoiced the goods clear back to the rear?
A. Yes, sir.
Q. Went right back, you and Mr. Selig?
A. Yes, sir. Maybe somebody else helped.
Q. You don't remember of anybody else?
A. I don't remember of anybody else; maybe they did; a few goods.

119 Q. What percentage of the goods did you invoice at less than the cost price?

A. Ten per cent.

Q. No, no. What percentage of the goods were so poor that you invoiced them at less than the cost price?

A. I can't remember that. We had goods. We invoiced them at what we could buy them at.

Q. What was Zeiting's business?

A, He was a clothing man—a dry-goods man.

Q. Where?

A. In Missouri, I think.

Q. Did he have any business here?

A. No, sir.

Q. How long had he been here?

A. Five or six months.

Q. Had he been doing any business here?

A. No, sir.

Q. When did he go away from here?

A. Two months ago; I don't remember exactly.

Q. Did you put it down in the invoice book or did you call off?

A. I called off and put down; we changed off.

Redirect examination:

Q. When you say that Selig hadn't done any business you mean by that he hadn't done any business for himself?

A. He was working for Mr. May.

Q. In what sort of a house and in what kind of business?

A. Engaged in the clothing business.

Q. Engaged as a clerk for Mr. May for five or six months that he was here?

A. Yes, sir.

Recross-examination:

Q. Who are you working for now?

120 A. I am working for the Manhattan Clothing Company.

Q. Who is the manager of the Manhattan Clothing Company?

A. Lou Shoenberg.

Q. Has Joseph Shoenberg anything to do with it?

A. I don't know.

Q. Has he appeared to have anything to do with it?

A. I don't know; he was there a few days.

Q. How long ago was he there?

A. About two weeks.

Q. Well, how long was he there before he went away two weeks ago?

A. About four or five weeks.

Q. Hasn't he been there since the establishment of the Manhattan clothing store up to the time he went away?

Objected to as immaterial, incompetent, and nothing to do with the issues in this case.

A. He was there; that is all I know.

Q. Would you know the goods that you invoiced last March for May and Hirsch—would you know them?

A. What is that?

Q. Wouldn't you recognize the goods you invoiced for May and Hirsch?

A. I would recognize some of them if I saw them.

Q. State if some of the goods you invoiced are not in this stock in the Manhattan clothing-house.

A. I don't know.

Q. Don't you think they are?

Objected to.

A. That is something I don't know.

Q. Don't you know that they are there?

A. No, sir; I can't see any; I don't remember any.

Q. Will you swear that they are not there?

A. I can't swear. I can't remember. I could remember a few goods, as I told you, but not all of them.

121 Q. Where did you go after you took the invoice of that stock of goods last March?

A. I stayed in the store. I worked there.

Q. Worked for whom?

A. I worked for the house, the Lion clothing-house. I stayed there. I worked for Joe Shoenberg then.

Q. After Joe Shoenberg bought the goods you stayed there, did you?

A. Yes, sir.

Q. Well, what did you do next after you quit working for Joe Shoenberg in the Lion clothing-house?

A. After I quit I was idle for a day or two, and then worked for the Manhattan.

Q. After you quit Joe you went to work for the Manhattan?

A. Yes, sir.

Q. Who hired you to go to work for the Manhattan?

A. Joe Shoenberg.

Q. Do you know David May?

A. Yes, sir; I do.

Q. Did you ever work for him?

A. Yes, sir. I worked for him before that time.

Q. Isn't David May interested in the Manhattan clothing store?

A. I don't know.

Q. Doesn't he come there pretty often?

A. He comes there. He don't come very often—in passing, like any man does.

Q. Does he go back to where the business is done?

A. I don't know. I don't pay any attention to anybody.

Q. What is your business?

A. I have the hat and shoe department.
Q. You simply attended to that department?
A. Yes, sir; at present.
Q. Who did you say was managing the business now?
A. I don't know who is managing the business now. Louis Shoenberg is there now.

Q. When you went into business in the Manhattan, Joe
122 Shoenberg hired you, didn't he?
A. Yes, sir.

123 RUDOLPH NEY, recalled on the part of the defendants May and Hirsch, testified.

Examined in chief by Judge GUNNELL:

Q. Mr. Ney, you have testified before in this case, I believe?
A. Yes, sir; yesterday morning.
Q. Do you recollect the occasion of the taking of the inventory of the stock of goods concerning which you testified yesterday?
A. Yes, sir; I recollect.
Q. When was that, before or after, and how soon, with reference to the taking possession of that stock by May and Hirsch?
A. It was the same day or the next day; they took possession in the evening, and the next day they began to take invoice.
Q. State whether or not you assisted in the taking of that invoice.
A. I helped to do it.
Q. Who else helped to do it?
A. A few clerks of May's.
Q. Mr. Strauss was there from Denver—the man with the side whiskers?
A. I think he was there. I don't believe he helped much; it didn't seem to me he helped much.
Q. He was there at the time?
A. Yes, sir.
Q. What particular part, if any particular part, of the work did you do?
A. I put it down as the clerks of Mr. May wrote it up, and I put it down in a book; some put it down in their own books, and I took a copy of it.
Q. There were several invoices of different kinds of goods at the same time?
A. Yes, sir; of course one man couldn't put it down all the time.
Q. Mr. Cash was there some of the time?
A. Yes, sir.
Q. And Lou. Johnston assisted about the hats?
A. Yes, sir; he was there.

124 Q. And Sol. Strauss?
A. Yes, sir; the young man.
Q. Yourself?
A. I helped there, and there was another clerk by the name of Selig.
Q. Do you know where Selig is now?

A. No, sir; I can't tell you.
Q. How long had Selig been in town at that time?
A. I think a few months.
Q. What was he doing at that time?
A. He was a clerk for Mr. May.
Q. Mr. May was engaged in the clothing business was he?
A. Yes, s'r.
Q. Now, I am asking this for the purpose of the record whether or not you purchased the goods that you invoiced whether they were purchased by you?
A. Yes, sir; they were purchased every one as much as I ever saw.
Q. State whether or not there was a full and complete delivery made.
A. As much as I knew it was full and complete and good delivery when taken.
Q. How did you arrive at the value of the goods in making that invoice?
A. They were all marked and essentially the new goods were taken at the marked price. Some old goods were taken at 75 %.
Q. Well, do you know anything about the value whether the values were fixed or not?
A. I am not a coming man. I can't tell you.
Q. These values were fixed by somebody else who was a coming man?
A. Yes, sir; a coming man.
Q. You are a good-looking man, are you not?
A. Yes, sir; and have been on occasions, yours.
Q. And you assisted in the way of selling goods?
A. Yes, sir; in person of Mr. Lion he waited me then.

By Mr. Dexter:

Q. Who Lion?
A. Mr. Sam. Lion—Lion & Lion and I was in person of Mr. Lion. I don't know whether I was or not. He could be identified by himself.
Q. Who did you do your time while you was here?
A. The mortgagee.
Q. May and Firsch?
A. May and Firsch.
Q. State whether or not you had a conversation in your room with Mr. Lion, a few days you was here with reference to Firsch's paying any money? State how I counted one of them.
A. As far as my knowledge. I was here a few days, and Lion came in.
Q. When was the first order of that May and Firsch had possession of the goods?
A. After.
Q. When was it before or after the sale of the goods by May and Firsch?
A. Some time before.

Q. It was after they took possession and before the goods were sold?

A. Yes, sir.

Q. Now, then, what was that conversation? State it as nearly as you can.

A. Mr. Rich came up and told me he wanted five thousand dollars of Mr. Hirsch. I passed a remark that it was quite a little amount of money. He said twenty-five hundred would do if he couldn't give him five thousand dollars, and I will drop everything and try to make a living in dealing in wool.

Q. What, if anything, did you say to him about that, whether Hirsch could give it to him?

A. Why, I couldn't say anything.

Q. Now, I will ask you to state whether you had a conversation at another time with Rich at the place you were boarding.

A. That was at Mr. Rich's house.

126 Q. What, if anything, did he say there with reference to what Hirsch could say about him?

A. He was talking with a gentleman by the name of William Hirsham, of Kansas City. He said all Hirsch could say about him was that he told him a lie; that he thought he could work himself through all right and he couldn't. He told me that he thought he could work himself through.

Q. You mean Sam. Rich had told Hirsch he could work through when he couldn't?

A. Yes, sir; that is right.

Q. And that Hirsch thereby could say that he, Sam. Rich, had told him a lie on that subject?

A. Yes, sir; that it was a lie; that was the only lie he could say about him.

Q. When was it with reference to the sale of goods, before or after, that you heard Rich say that Hirsch could say and all he could say was that he had told him a lie?

A. It was after everything was over; it was in May.

Q. About how long after?

A. The middle of May it was; about May the 15th, I should say.

Q. The sale took place on what day?

A. I don't remember that.

Q. Do you know Louis Nathan?

A. The clerk of Mr. Rich?

Q. Yes, sir.

A. Yes, sir; I knew him in the house.

Q. Do you know where he was engaged during the time you was collecting the money, as testified by you yesterday?

A. He was engaged for Mr. Rich.

Q. State whether or not during the time you was collecting the money you went to the store and asked for the bills of goods that were being shipped there and took them away.

A. Yes, sir; I went there once and got a few bills—invoices.

Q. And what did you do with them?

127 A. Why, I got them in the evening and took them home and looked them up to see if they were correct.

Q. What did you do that for?

A. Just to satisfy my own mind; nothing else.

Q. In whose interest were you acting then?

A. In Mr. Rich's, as he told me before he went away to look after it a little. Of course I didn't get paid for it, but it was no more that right.

Q. Did Mr. Rich say anything to you about not wanting to trust the store?

A. He told me before he left that he would not trust this Louis Nathan. He couldn't trust him; that he gambled, etc., and I believe the other clerk wouldn't handle the money, so he asked me to do that.

Q. Did I understand you to say you only took the bills away from the house once?

A. Only once. That is all I remember.

Q. When you went down there to look after the matters of Mr. Rich state whether or not you looked over the bills to see if everything was correct.

A. *You* see if the bills was correct. That is all I wanted to see. That is all that interested me.

Q. State what Mr. Rich told you to do with the money when he requested you to take charge, before his leaving for the East.

A. He told me to make deposits in the bank and gave me his time book.

Q. Did he tell you or not at the time to pay the money into the bank and apply it upon any promissory note?

A. No, sir. I didn't know anything of that note. It was new to me.

Q. State whether or not after Rich returned from the East, and, if so, where and when, he made any statement to you as to the value of the goods he had in the store.

128 A. Why I met him the first day we started to take the invoice. I met him at the corner of 5th, right below here, and he was asking me how we was taking stock and so on. I told him. So I asked him whether he knew how much stuff he had on hand at the time he mortgaged this stuff. Well, he says he didn't take invoice before he went East, but he could come pretty near telling it. Before he went East they had between fourteen and fifteen thousand dollars' worth of stock on hand, so I asked him how much he bought and he said about twelve or thirteen thousand. That would make twenty-six or twenty-seven thousand altogether.

Q. Then he said he had before he went East about fourteen thousand dollars' worth?

A. About fourteen or fifteen; he couldn't tell exactly.

Q. And he had bought between twelve and thirteen thousand dollars' worth?

A. Yes, sir.

Q. That would make twenty-six or twenty-seven thousand dollars' worth?

A. Yes, sir.

Q. Do you know how many goods he sold while East?

A. One of the clerks told me about three thousand dollars' worth.

Q. That would leave a stock of goods according to his valuation of about twenty-four thousand dollars?

A. Twenty-three or twenty-four.

Q. Mr. Ney, Mr. Rich, in his testimony, has said this: "I took Mr. Hirsch's book-keeper and told him to take the receipts every night and to pay them into the bank to go on that note." I will ask you to state whether it is true that he told you to pay them on that note.

A. No, sir; I went into the bank to the paying teller and
129 he wouldn't receive the money. He told me to go and see Mr. Mitchell. I didn't know what was going on. He showed me the note and told me it was the agreement that the money should be paid on the note, but it was entirely new to me.

Q. Are you acquainted with Jake Rich, the brother of Sam., the defendant?

A. Yes, sir.

Q. Do you recollect having any conversation with Jake Rich, the brother of Sam., as to what you were doing with the money that you took from Rich's store at night?

A. No, sir; I never had any conversation with him.

Q. Did you at any time in the presence of David May, or at all, have any conversation with Jake Rich in which he said to you, "You have taken sufficient money to pay that note," and that you replied that you were authorized by Dave May and A. Hirsch not to deposit any more money?

A. I never talked with Jake Rich about this matter at all, and what he says there is a lie; every word that there is there.

Q. Did Adolph Hirsch and David May or either or both of them give you any instructions as to what you would do with the money?

A. No, sir; I never asked them any instructions and never asked their advise. They had nothing to do with it.

Q. They had nothing to do with it?

A. No, sir.

Q. You was employed in the matter by Mr. Rich or requested by him?

A. I done it for him as a favor.

130 And thereupon the further taking of testimony was adjourned to 1.30 p. m. of the same day.

Parties met pursuant to adjournment, and thereupon the direct examination of Mr. NEY was proceeded with as follows:

Q. Now, I will ask you to state again how you came to go and assist in taking the invoice of the stock of goods; who requested you to and what was said?

A. The way I understood it, Judge, it was by Mr. Rich's request.

Q. And what did Mr. Rich say to you?

A. He didn't talk to me directly that morning; it was Mr. Hirsch came to me first. I worked with him at the time and he sent me to the inventory and said, "Sam. wants you there; he would like to have you there."

Q. Like to have you there?

A. Yes, sir.

Q. Why?

A. I suppose he had a whole lot of confidence in me.

Q. Anything said about his wanting anybody there to look after his interests?

A. He passed that remark; he said so to me later, that he was glad to have me there.

Q. Did you meet Mr. Rich directly after his arrival from the East?

A. Why I saw him immediately after his arrival here.

Q. How long since the train had gotten in when you saw him?

A. It couldn't have been more than an hour or so—an hour and a half. I don't know as the Rio Grande was on time; it was about nine o'clock.

Q. Did you have any conversation with him in reference to his business here or the money you had collected at that time?

131 A. Yes, sir; I asked him to come to Hirsch's office; that I had the money at the time in Mr. Hirsch's safe. I told him to come and get the money. He said he felt tired and would be there after dinner—one o'clock. I waited for him, but he never showed up.

Q. After that you did meet him in a saloon and gave him the balance of the money?

A. That was a good deal after.

Q. This conversation you had with him when you told him to come and get the money was before the transfer?

A. That was, I am sure, before he ever saw Hirsch.

Q. You are sure, then, it was before he saw Hirsch?

A. Yes, sir.

Q. I will ask you to state whether or not at the time the invoice was made you completed that invoice and put it in one book as a general whole.

A. Yes, sir; I put it in this book.

Q. Do you mean to say in this book I hand you now?

A. Yes, sir.

Q. State whether or not this is a correct invoice of the goods as taken at the time it was taken immediately after May and Hirsch took possession of the stock of goods.

A. Yes, sir; that is a true invoice, as much as I know of those goods.

Q. Whose writing is that?

A. My handwriting.

Q. You are a book-keeper by profession?

A. Yes, sir; that is my trade.

Book offered in evidence and marked Exhibit 1.

Objection reserved to the introduction of the same by the complainants.

Cross-examination by Judge DECKER:

Q. Mr. Ney, who do you say is your partner?
A. Mr. E. Albright.
Q. Are you related to either David May or Adolph Hirsch?
132 A. To Adolph Hirsch.
Q. What relation are you?
A. A cousin of mine.
Q. What relation is your partner?
A. My partner's wife is a cousin of mine.
Q. But what relation is your partner to Adolph Hirsch?
A. Brother-in-law.
Q. You say that you assisted in taking this invoice which was taken for May and Hirsch at the request of Sam. Rich?
A. Yes, sir; as I said this morning.
Q. I understand you to say that he said nothing about it to you—it was no personal request on his part?
A. Not at all. Afterwards he told me that he was glad to have me there.
Q. Did he come and say anything to you about assisting in taking an invoice?
A. No, sir.
Q. Who made that statement to you?
A. Mr. Hirsch; in the beginning.
Q. Did you hear it from anybody else than Mr. Hirsch?
A. From Mr. Rich.
Q. I understand you to say that Mr. Rich afterwards said he was glad to have you there?
A. Yes, sir.
Q. That was all he ever said to you on that subject?
A. That was all he ever did. He told me that he was glad to have me there; that he asked Mr. Hirsch to have me there. He had to ask him, as I was in Hirsch's employ.
Q. You say Mr. Hirsch came to you and told you that?
A. Yes, sir.
Q. When did Rich say he was glad to have you there?
A. That very day.
Q. Was it after you commenced taking the invoice?
A. Yes, sir.
133 Q. How long had you been engaged taking the invoice when Rich made that statement?
A. We started in in the morning he told me, the same day.
Q. In the afternoon?
A. The afternoon or evening; the afternoon some time; I can't tell you the hour; I think it was in the afternoon.
Q. You say that you went to Rich's store when he was absent in the East and you got the bills of goods for goods that came here?
A. Yes, sir; got some of the bills.

Q. Where did you take them?
A. I put them in my pocket and went to the room where I slept.
Q. Are you a married man?
A. No, sir; a single man.
Q. Where was that room?
A. On the corner of 5th and Poplar streets.
Q. At whose house?
A. It is called the Key Stone block.
Q. It was not in a private house?
A. I don't know who it belonged to.
Q. Did anybody live there with his family?
A. I guess not; I don't know; I never bother about that.
Q. How long did you live there?
A. I may be there now about ten or eleven months.
Q. Do you live there yet?
A. Yes, sir.
Q. You don't know whether there is any family living there or not?
A. I don't know whether there is a family or not; it is just private rooms.
Q. You say you took those bills to that room?
A. Yes, sir.
Q. What did you do with them?
A. Figured them up.
Q. What did you figure them out for?
A. To see if they were correct.
134 Q. What did you want to know; what was there about them that you wanted to see as to correctness?
A. Why to see if the bill was figured out right.
Q. To see if the sum total of each bill was right?
A. That belongs to it; yes, sir.
Q. And what else?
A. To see if single items were right.
Q. What do you mean by seeing if single items were right?
A. I can explain it in this way: If we ship a barrel of whiskey, forty gallons, and it is sold at two dollars and a half, and I figure it to see if it is right or not, and you might have five barrels in six.
Q. Were you ever in the clothing business?
A. No, sir; never have been before.
Q. How many bills did you take to your room at that time?
A. I can't tell you how many.
Q. Did you take them there in the morning?
A. Hardly. I went there in the evening.
Q. When did you return them to the store?
A. I guess the day I got them; I think the next day; I didn't pay particular attention.
Q. Was there a half a dozen bills?
A. I can't tell you.
Q. What is your best judgment about it?

A. I don't remember how many—whether there was several bills.

Q. Did you *you* examine each one of them?

A. Each and every one.

Q. Now, what did Mr. Rich ask you to do when he went away?

A. To look after his business.

Q. You looked after his business, how?

135 A. In the first place, get the money and make deposits in the bank, and to look over it and to see if they were doing right.

Q. To see if who was doing right?

A. His clerks in the store.

Q. How often did you visit the store?

A. Probably once a day when I was in town.

Q. Once a day?

A. Maybe twice, I will say.

Q. When, then, did you visit the store?

A. In the evening.

Q. About closing-up time?

A. About closing-up time.

Q. You say he requested you to look and see if things were going on all right?

A. Yes, sir.

Q. What did you do in that respect, to see if things were going on all right?

A. I got the money, looked up the bills, and asked how business was getting on, and——

Q. That is the way you looked after it?

A. Yes, sir; I didn't go into details any further.

Q. He didn't ask you to?

A. No, sir.

Q. How could you possibly tell how the business was being run by going in in the evening, getting the money, and asking the questions you say you asked the clerks; how could you tell how the business was being run?

A. Well, nobody has asked me that; if Mr. Rich asked me I would tell him.

Q. How could you tell?

A. A business man can generally tell.

Q. Well, how was it run?

A. Well, they done the best they could, those clerks.

Q. How do you know anything about it, how they run the business?

A. I can see whether a man does his duty or not.

Q. Do you know whether they reported all the sales they made during the day?

A. No, sir; I can't swear to that.

136 Q. That would be looking after the business?

A. I would have to be there from morning till night.

Q. Isn't it a fact that all he requested you to do was simply to get the money and deposit it in the bank?

A. No, sir.

Q. That is all you did, as a matter of fact, except to take those bills and see how many goods had been shipped?

A. I don't say that. I state I was there sometimes twice a day.

Q. What time of day the second day or first time you would go? What would you go for?

A. To see how things were going on.

Q. How long did you stay?

A. Perhaps a half an hour or so; sometimes more and sometimes less.

Q. What did you do the times you went there—the other times than when you went there for the money?

A. I asked the clerks; I had to take their word for it.

Q. You say that Rich told you on the street down here, at one time, that he had fourteen or fifteen thousand dollars' worth of goods on hand?

A. Yes, sir.

Q. And that he bought from twelve to thirteen thousand dollars' worth?

A. Yes, sir.

Q. Now, didn't you state to Mrs. Rich that Sam. told you that there was eighteen thousand dollars' worth of goods there?

A. No, sir.

Q. You didn't make that statement?

A. No, sir.

Q. What did you have to do with taking the invoice of that stock?

A. I put it in there as book-keeper.

Q. You simply put it in that book?

A. Yes, sir.

Q. You didn't count the goods on the shelves?

A. No, sir.

Q. You simply entered in that book the sheets that were given to you?

A. Yes, sir.

Q. Where are those original sheets?

A. I can't tell.

137 Q. What became of them?

A. I don't know.

Q. What did you do with them?

A. I used them as long as I had to of course, when my work was done I returned them.

Q. When did you copy them into that book?

A. Soon after we got through.

Q. How soon?

A. A short time. I don't remember exactly.

Q. Was it a day, a week, or two weeks?

A. It was not a day or two weeks or two days.

Q. How long was it?

A. I can't tell you.

Q. Give your best impression.

A. It was soon after it was done.

Q. Was it after the goods were sold to Shoenberg that you copied off these sheets into this book?

A. After the goods were sold to Shoenberg—after that I had nothing to do with it.

Q. I ask you if you copied the invoice sheets into this book that you have here, marked Exhibit "1," after the goods were sold to Shoenberg?

A. I might have done it. I don't remember.

Q. I understand you to say you have no knowledge as to where those sheets are.

A. No, sir; I do not know what became of them.

Q. At whose request did you copy them into that book?

A. Mr. Hirsch's.

Q. Where has that book been since you copied that invoice in?

A. I guess in Mr. May's store.

Q. Where did you get it now?

A. At Mr. May's store.

Q. As a matter of fact, you don't know anything about as to whether that is a correct invoice or not?

A. Well, sir, I am not a clothing man.

Q. As to whether it is correctly taken?

A. I think it is correctly taken.

Q. Do you know of your own knowledge?

138 A. I don't understand this business well enough to say yes. I am under the impression it was taken right.

Q. I am not asking for your impression; I am asking for your individual knowledge.

A. I didn't count the goods.

Q. And you didn't take the items as they were called off?

A. No, sir; I simply put it in the book, maybe sometimes in slips, or I took the slips from others and took a copy in this book.

Q. Who did you give those slips to from which you made the copy into this book?

A. These original slips were left at the store down below.

Q. Whose store?

A. That Mr. Rich used to have. I don't know what became of them. I haven't been in the house since.

Q. Who did you leave them with?

A. The man who had charge.

Q. Who had charge?

A. Shoenberg.

Q. Joseph Shoenberg?

A. I think so. I don't know who bought the stock.

Q. How long did you say you had been in business for yourself in company with this gentleman, Albright?

A. We started in on the first of August.

Q. Did you buy your stock of goods here?

A. Part of it.

Q. Who did you buy of?

A. I bought part of my goods from Adolph Hirsch.

Q. Are you indebted to him now for part of that stock?
A. Yes, sir.

Redirect examination:

Q. Where are you buying your goods now?
A. I am buying them all over the country, wherever I can buy the best and cheapest.
Q. You buy, like anybody else, wherever you can get the best bargain?
A. Yes, sir.
139 Q. You owe to others besides Hirsch?
A. Yes, sir; I owe more to others than to Hirsch, I am sorry to say.
Q. What business is Hirsch engaged in, wholesale or retail?
A. Wholesale liquor dealer.
Q. He is selling to everybody here?
A. Yes, sir.
Q. And you buy of him when you can get a good bargain?
A. Yes, sir.
Q. And when you can't, you buy from other people?
A. Yes, sir; I do.
Q. Who else do you buy from besides, here?
A. New York, of Hess and Weil.
Q. Do you buy from anybody in Kansas City?
A. No, sir; I buy some in Denver.
Q. Who in Denver?
A. Bahn & Company.

Counsel for complainants here renews his objection to the admission of the invoice book in evidence, because it is not the original invoices and there is no evidence that it contains all the goods of which invoices were taken of the stock in question.

140 JACOB SCHLOSS, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. Where do you reside, Mr. Schloss?
A. In Leadville.
Q. How long have you lived here?
A. Nine years.
Q. Lived here constantly during that time?
A. Yes, sir.
Q. What is you- age, please?
A. I am fifty-two years old.
Q. Are you acquainted with N. H. Thorne, the witness who has heretofore testified in this case?
A. I am acquainted with N. H. Thorne.
Q. Who does businees in Leadville—the tobacco-ist?
A. Yes, sir.

Q. How long have you known him?
A. Seven or eight years.
Q. Has he lived here during that time?
A. Yes, sir.
Q. Are you acquainted with the reputation of N. H. Thorne in this community where he lives for truth and veracity?
A. I am.
Q. State, if you please, what that reputation is—whether good or bad.
A. As far as I know him and his reputation it is bad.
Q. Do you know him to be regarded by his neighbors and friends as a truthful or untruthful man?
A. As an untruthful man by a great many.

Cross-examination by Judge DECKER:

Q. Mr. Schloss, what is your business?
A. I am in the real-estate business.
Q. Are you acquainted with David May?
A. Yes, sir.
Q. Joseph Shoenberg?
A. Yes, sir.
Q. Were you the gentleman who was the assignee of May and Shoenberg four or five or six years ago?
A. Not of May and Shoenberg.
141 Q. What was the firm?
A. Joe Shoenberg.
Q. Is it this same Joseph Shoenberg that bought this stock of goods at this sale?
A. Yes; I think it is.
Q. Is David May the defendant in this case the same David May that was a party to the suits in Denver growing out of that assignment?
A. Yes, sir.
Q. Have you had any business with Mr. Thorn?
A. Yes, sir.
Q. Are you on good terms with him?
A. No, sir; I am not on speaking terms with him.
Q. How long is it since you have been on speaking terms with him?
A. Four or five years.
Q. Had any lawsuit with him?
A. No, sir.
Q. A personal matter existing between you and he?
A. Not personal; no, sir; it is——
Q. I don't care what it is; is it personal?
A. No, sir; it isn't.
Q. You and he don't speak?
A. We had some business together—a business matter.
Q. Who is it that you have heard say that his reputation for truth and veracity is bad?

A. Well, generally.
Q. Well, give one man.
A. Well, Mr.—I have heard his old partner, Mr. Schaffer.
Q. Does he live here?
A. Yes, sir; he lived here.
Q. They had a difficulty, did they not?
A. I don't know what they had.
Q. Who else?
A. I have heard Mr. Butler—the two Butlers—and I have heard a number of Christian gentlemen here. Of course, in four, five, six, and seven years you hear a great deal, and it would be pretty
142 hard to place their names, but what I can learn — the general idea of the man he is, that Mr. Therne is not regarded as a good man.
Q. Of course, your present feeling has nothing at all to do with this?
A. Nothing at all; not the remotest.
Q. Can't have it?
A. No, sir.

143 DAVID MAY, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. What is your full name, age, residence, and occupation?
A. David May; age, 39; residence, Leadville; occupation, merchant.
Q. What sort of a merchant; what sort of goods do you deal in?
A. Clothing and furnishing goods.
Q. Gents' clothing and furnishing goods?
A. Yes, sir.
Q. Are you acquainted with the defendants in this case?
A. Yes, sir.
Q. Are you one of the defendants in this suit?
A. Yes, sir.
Q. Are you acquainted with the plaintiffs in this suit?
A. No, sir; Tenney, isn't it?
Q. Yes, sir.
A. No, sir.
Q. Are you acquainted with the defendants Sam. Rich and Adolph Hirsch?
A. Yes, sir.
Q. How long have you known them respectively?
A. I have known Hirsch about thirty years; I have known Mr. Rich about six or seven.
Q. (Handing witness a paper). Do you know whose signature that is to that paper?
A. Yes, sir; that is Mr. Sam. Rich's signature.
Q. Sam. Rich, the defendant in this case?
A. Yes, sir.

Q. Did you see him sign it?
A. I did.

By Judge DECKER: There is no question about Rich's executing the mortgage.

Chattel mortgage executed by Rich offered in evidence and marked Exhibit "2," the same being received without objection.

Q. Do you know the plaintiff Lowenstein?
A. No, sir; I don't.

Q. Do you know Henry Leiberman, of Chicago, who testi-
144 fied in Chicago and gave his deposition in this case?

A. Yes, sir; I do.

Q. Do you know whether Leiberman is one of the creditors of Sam. Rich or not?
A. Yes, sir; I do.
Q. Do you know that he is?
A. Yes, sir.
Q. Do you recollect having a conversation in your store, in Leadville, some time during the month of January with said Lieberman with reference to Rich and his business?
A. No, sir; I do not.
Q. Did you have a conversation with Leiberman in the office in your store?
A. Yes, sir. I was talking to Mr. Leiberman on different topics. He came in to sell me some goods, and I believe I did buy a bill of goods at that time. I told him I would look at his samples the following day; talking generally about business. He asked me how trade was. I told him it was good, and the usual talk of business men, and I asked him how was trade.
Q. Was there anything said in that conversation about Rich and his business?
A. No, sir; he never asked me anything about Rich nor did he ask me anything in regard to Rich's affairs.
Q. About what time was that he was in your store?
A. I think it must have been in the month of January or February, 1887.
Q. Mr. Leiberman testifies in his deposition that at the time he was here, in January of this year, he made inquiry as to the responsibility of Sam. Rich, and that he made that inquiry of you. I will ask you to state if he made any such inquiry at that time or at all.
A. He made no inquiry whatsoever of me.
Q. In reference to Sam. Rich?
A. In reference to Sam. Rich; no, sir.
Q. Mr. Leiberman testifies that at the time he was in your store talking about business and other things that you then asked him if Sam. Rich owed Leiberman any money or the firm of Henry
145 Leiberman & Company. State whether or not you asked him that question.
A. No, sir; I never asked him that question; it is a very im-

pertinent question to ask, and I never asked him any such question.

Q. He says that he answered you that Sam. Rich did owe him, and that you told him, Leiberman, that Sam. Rich was all right. State wheth- or not such a conversation occurred between you.

A. No, sir.

Q. Was there any one else present at the time you did have a conversation on general business prospects when he was here in January?

A. Yes, sir.

Q. Who else was present?

A. There was sitting around the store several clerks in the house — stood around while we was talking.

Q. Do you know whether or not any one of the clerks heard what he said?

A. They stood right there and heard it. It was cold, in the winter time, and we usually gathered around the stove; there must have been four or five men there.

Q. Give the names of those present.

A. The gentlemen clerking for me, Lou. Jacobs, Limline, who is now dead, and a fellow by the name of Selig, he was clerking for me, and there was one or two strangers, a fellow by the name of John Rule.

Q. Have you ever talked with them up to the present time as to whether they heard that conversation and recollect it?

A. No, sir.

Q. Referring to the mortgage which is introduced as Exhibit No. "2," I will ask you to state the circumstances under which you received the mortgage or it was given to yourself and Adolph Hirsch, from the beginning, in your own way.

A. Mr. Rich one Sunday——

146 Q. When was that?

A. In September of 1886, in the fall, he invited me to his house at dinner, and after dinner we walked; it was on Sunday; we were walking over to the church; we had an election day of our congregation. He told me that he had signed a note to Simon Hirsch which he had obtained from Nat. Nathan and Ed. Nathan, which they owed him; he had sent that note to Simon Hirsch, of Kansas City, to get it discounted; that he *ahd* got a letter from them saying that their credit in the bank was full and they could not get it discounted, and that he was in a predicament, as he needed the money, and asked me if I couldn't help him out. I told him I would see if I could get it discounted, as it was good with the indorsement of Hirsch and Nathan. I sent the note to a party who usually discounts notes here asking them to discount it, but they said no. The next day Rich came over to see me—if I could do anything for him. I told him I saw the party who usually discounts notes here, and that he said he didn't want it. He begged of me to see if I could not get it discounted in the bank, as no doubt the Nathans would pay and protect the note on maturity; so I took the note over to McNeil and told McNeil that Rich needed some

money to pay notes in the bank, and asked if he would not discount it. He said yes, "if you will endorse it I will." I said, Rich is in a bad box to meet payments due in the bank. I will indorse it if he will give me the assurance that it will be paid at maturity. This is the same note I indorsed, and it was placed to his credit.

Q. Who was McNeil at that time, and in what business was he engaged?

A. President of the Carbonate bank.

Q. Is that the same bank mentioned in the chattel mort-
147 gage as holding paper against Rich?

A. Yes, sir; the same bank.

Q. McNeil was then president of it?

A. Yes, sir.

Q. Tell what subsequently occurred.

A. When that note came due I was not home. I was in New York. When I came home I found that note was not paid, and Rich came in the morning I came home. He told me it was impossible to raise the money and couldn't pay, and it would have to run a little while longer; so I went and told McNeil that Rich couldn't pay that note and to hold it awhile, as the Nathans expected to ship eight or ten car-loads of cattle. I believe the note was held a few days and McNeil sent me word that he didn't like to carry matured papers in the bank. He says he either wants the money or a new note. I told Rich about it. He says to see Simon Hirsch and he will indorse it and I will indorse it, and I will send the not- to Nathans and get a new note, and he shall go on that note. To accom-odate him I did it.

Q. You took up the old note and made a new note?

A. Yes, sir. It run around and the same thing occurred again, and he came to me crying—up to the hotel—and said he had a note to pay to-morrow, and he had been to see Hirsch and he wouldn't do anything for him.

Q. What Hirsch?

A. Adolph Hirsch. He said, "For God's sake, do something for me, or I will be in a terrible hell, and I can't pay these notes falling due to-morrow unless you help me out."

Q. What did you do about that?

A. The way he cried to me kind of touched my tender feelings, and I told him I would telephone to Hirsch and see if he will go on another note and try and help him out. He telephoned for Hirsch to come up to the hotel. I told Hirsch the way Rich explained the matter; he had notes to pay to-morrow and couldn't
pay it and must be protected. He said, We will see to-
148 morrow. He didn't give me any positive answer. The next day Hirsch came to me and says, I should go on the note and maybe he would do it. I think it was fifteen hundred dollars. This is the one of twenty-five hundred dollars I just stated about.

Q. What was the note you and Adolph Hirsch signed on that Sunday?

A. On that Monday, the following day, I didn't care to do it at that time, but he appealed to me so strong I did it.

Q. Now, just state what you did on Monday on pursuance of that conversation between yourself, Hirsch, and Rich at the hotel.

A. I went over to the bank and told McNeil he couldn't take that note up; that he wanted to renew it, or I mean to let it run for awhile, for a few days; the note was due several days previous in November. I told him he expected some money and he would liquidate it sure. It remained unliquidated, and finally McNeil sent me word it must be renewed. He got word from Hirsch, in Kansas City, that he would go on the note if I would. McNeil said if I went on the note he could have the money.

(Note marked Exhibit "3.")

A. The next assistance I rendered Rich was he came over to me on a Sunday morning. It was in the early part of January, the 9th, I believe. He says, I have got a note to pay again to-morrow and I want you to help me out. I says, Sam., I can't indorse any more for you. I don't want to ask the bank right along. He says, I will sell you some goods. I says, if you have some goods I can use at the price I will pay I will take some. He says, All right. In the afternoon at three o'clock I went over there and went through his stock. He had very little stock I could use, as it was broken stock; small sizes. I went through his
149 stock and said I would be willing to pay him what was right. He said, All right; just pay me enough to meet that note to-morrow. I picked out some goods, and I said, I will tell you what I can give you for these goods. I picked out four overcoats and told him I could give him nine dollars for those, and three overcoats nine dollars, and three more at nine dollars, and two overcoats at nine; then I picked out some men's suits and said I would give ten dollars for those, and three coats and vests and told him I would give seven dollars and a half for them. He said, That is all I expect for them; it is all they are worth. Then 12 suits, I gave him nine dollars for them, and four suits at nine dollars; two coats and vests, six dollars; two suits, eight dollars; one coat and vest, five dollars and a half; nine Cardigan jackets, a dollar and a quarter; 4 Cardigan jackets I gave him two dollars; one sleigh robe, two dollars and a half, which was a robe used in the store; a boy slept on it. I could use it for my own use. Four pair of suspenders at $1.25, two dozen shirts at seven dollars and a half, 9 dozen shirts at seven dollars, seventeen dozen white cotton socks at a dollar and a quarter, 13 dozen white cotton socks at a dollar and a quarter, 21 dozen colored socks at sixty cents, six dozen Oregon City flannels at twelve dollars, 3 dozen shirts at twelve dollars, and three dozen shirts at fifteen dollars, making a total of $676.10.

Q. State now how you paid for those goods.

A. That was on Sunday. I told Sam., You can send them over to me in the evening. He says, The next morning I need some money to pay that bill with. The next morning? I says; how much do you need? He says, Three hundred and fifty dollars, and on Wednes-

day or Thursday following I will need the balance. I
150 gave him a check for three hundred fifty dollars, exhibited here.

Q. Is that the correct amount of the goods you bought from Rich, this exhibit marked "4"?

A. Yes, sir; that is a correct account of it.

Q. This check marked Exhibit "5," was that given by you to Rich in payment or partial payment of that bill of goods?

A. Yes, sir.

Q. When, if at all, did you pay him the balance for his bill of goods?

A. On the following Wednesday or Thursday. I have got a check dated on the 14th. This one is on the 10th; must have been four days later.

Q. Is the check marked Exhibit "6" that you gave in payment for the balance of this?

A. Yes, sir.

Q. Now, you may make any explanation of that check.

A. That is the total of that bill, $676.10; the first check was $350.00, and Mr. Rich owed me an account of $19.80, which he told me to leave out, and that check was for the balance, $306.30, which is marked in full on the account.

Q. Is that your writing on that check?

A. Yes, sir.

Q. Did you write at the time you gave the check?

A. Yes, sir; I did.

Q. How long was this before the transaction of the mortgage?

A. Long prior to it; this was on January 14th.

Q. Are these the same goods alluded to in their testimony of Sam. Rich and Jacob Rich?

A. Yes, sir; the only goods I ever bought.

Q. Did you have any conversation with Jake Rich with reference to taking these goods or the purchase of them or taking them away?

A. No, sir; I did not.

151 Q. State whether or not you at any time said to Sam. Rich or whether you said at the time you was transferring the goods from Sam. Rich's store to your own store that you would allow him these goods to be applied on the payment of the note in the bank.

A. No, sir; there was no such understanding.

Q. Did you say that or anything of that substance to Jake Rich?

A. No, sir; I had no conversation with him.

Q. Did you say any such thing on the Sunday afternoon or evening in which you took the goods from his store to your own?

A. No, sir; there was no conversation. Jake Rich was there when they were removing the goods. There was nothing said to him. He asked no questions and nothing was said to him. It was a matter between me and Mr. Rich.

Q. Now, when was it this transaction took place between you and Sam. Rich?

A. That was January 9th, I think, and the bill was made out on the 10th. I had a copy of it.

Q. Of this present year?

A. Yes, sir; 1887.

Q. Subsequent to that time what, if any, business transactions did you have with Sam. Rich?

A. Well, once later again Sam. Rich was in the same predicament again, and he came to me and says, Dave, you have got to help me out. I have a note to pay to-morrow and Hirsch isn't in town. I can't meet it. The bank won't let me draw a cent; not a nick*le*. I says, Sam., I am in the hole just now as much as I want to be. He says, I will make it anyway to make it safe with you. I says, If you will give me a trust deed on your house. It was in his wife's name, and they told me that under the law he would hold a half interest in that property.

Q. His wife had died?

A. Yes, sir. He told me the property was worth two
152 thousand dollars anyway. He said he would give me a trust deed. I said, Sam., I don't want to lose any money. If you will give me a trust deed for your half interest in the property I will indorse for you. I went to Thompson and he drew up the trust deed, and I asked McNeil to let him have the money. It was Dougan I went to.

Q. Then that note was for fifteen hundred dollars?

A. Yes, sir.

Q. Is this the note here, marked Exhibit "7"?

A. Yes, sir; this is the note. At the time I got that money from him, Mr. Dougan, Sam. says, To show you I will pay you every dollar taken in while I am gone or Mr. Dougan, whenever they deposit any money it shall be applied on the note, so you won't loose nothing.

Q. State whether or not you signed any other note for Rich after that.

A. No, sir; I did not.

Q. That is the last note you signed?

A. Yes, sir; the last note.

Q. Did you sign any other note with Adolph Hirsch?

A. There is another one I signed with Hirsch. This was signed under some circumstances, I forget exactly.

Q. That note marked Exhibit "8" that you signed with Hirsch?

A. Yes, sir; that I indorsed for accommodation.

Q. Mr. May, look at this note marked Exhibit "9" and explain, if you please, what, if anything, you had to do with that note.

A. Yes, sir; the original note Rich put in the bank here. I had nothing particular to do with it, simply a moral obligation attached to that note. When Rich was gone Dr. Dougan became restless as to the payment of that note.

Q. Who was Dr. Dougan?

A. President of the bank. He told me he must put Rich's
153 matter in a different shape from what it was now; he told McNeil before he went out of the bank——

Objected to.

Q. I will ask you to state whether you and Adolph Hirsch took that note up.

A. Yes, sir; we paid them it.

Q. And paid it off?

A. And paid it off.

Q. State whether or not at that time the bank was making any threat of any kind of suing Rich and closing him out in business, and what, if anything, that had to do with the taking of that note up.

A. The bank threatened to attach that stock of goods unless it was in different shape than it was then; they wanted it indorsed. I told Dr. Dougan to wait until Rich returned.

Q. State whether the bank was trying to make you pay the note you had already indorsed before spoken of.

A. Yes, sir; they made repeated threats.

Q. Then do I understand you correctly that you and Hirsch paid them this seven-thousand-dollar note to the bank?

A. Yes, sir; we paid this note for ourselves.

Q. Gave your obligations?

A. We gave a note for it and paid it afterwards in cash.

Q. Look at this note, marked Exhibit "10," for fifteen hundred dollars and state what you had to do with that in paying it or taking it up.

A. That was the note originally indorsed by Hirsch which we assumed jointly.

Q. You took that up?

A. Yes, sir.

Q. Is that one of the notes mentioned in the mortgage, and are all of these?

A. Yes, sir; all of these.

Q. All of these are notes mentioned in the mortgage?

A. Yes, sir; all of these.

153½ Q. I will ask you to state whether or not these other four notes, marked Exhibits "11, 12, 13, and 14," are notes that are mentioned in the chattel mortgage.

A. Yes, sir; they are.

Q. State whether or not you and Adolph Hirsch prior to taking this mortgage alluded to assumed or paid all the notes mentioned in said mortgage and those that I have introduced in evidence as a consideration in the mortgage.

A. Yes, sir; we did.

Q. State whether or not that was the consideration for the mortgage.

A. Yes, sir; that was the consideration secured through that payment.

Q. State whether or not there was any consideration moving between you and Hirsch and Sam. Rich for the mortgage other than that expressed in the mortgage.

A. No, sir.

Q. Where were you, Mr. May, during the time Sam. Rich was East, in February and March of this year?

A. I was in California most of the time. I went to California the second day after Rich left here, and got here two weeks previous.

Q. Where was you at the time Rich returned from the East?

A. I was home here in the city.

Q. How soon after Rich's return did you see him first?

A. I saw him about noon. Rich came down in the morning. I went over to the store and saw him about noon.

Q. State, Mr. May, whether or not it is true that the goods bought by you from Sam. Rich and alluded to in the testimony of Jake Rich were taken out of the back of Rich's store and into the back door of yours; and, if so, upon what day of the week was it, and why you took them out of the back way and in the back way.

154 A. It was on Sunday—Sunday evening. His front door was closed and my front door was closed. We took them out at the rear on a sled, and they were delivered through my back entrance.

Q. Was there any reason, simply than that it was Sunday and your doors were closed?

A. That is all.

Q. I will ask you to state whether you had any other conversation with Jake Rich during the time Sam. was East or whether you was in California or Leadville at that time.

A. As I stated before, I was absent. I never saw Jake Rich, never had any talk with him or conversation whatsoever.

Q. While Sam. was away?

A. Or any other time.

Q. Where and what time of the day was it you saw Sam. Rich first when he returned from the East?

A. I saw him in his store. I went over there—the bank had sent for me and told me they had seen Rich and he couldn't fix the papers and that I had to do something; so I went and saw Rich and says, "Rich, they want their money in the bank and we have got to do something." I said, These cattle you were going to ship and this paper I am on there is no payment on it. I want this thing in such a shape that it will be safe.

Q. What did Rich tell you in reference to selling cattle?

A. He told me Nathan owed him about ten thousand dollars and had cattle, and as soon as they shipped their cattle he would get the money and he would be perfectly easy and pay the biggest bulk of the claims that were here.

(By DECKER:)

Q. Who said that to you?

A. Sam. Rich.

Q. State all the conversation that occurred between you and Sam. Rich at that time.

155 A. I told Sam. Rich that this matter must be put in different shape than it is now. I want to be secure in some way or another. He says, Well, what can I do? I says, The

best thing for you to do is to give us a chattel mortgage on this stock of goods which in all probability will let us out. He says, I want to do all I can for you; you shan't loose a cent. He says, Wait until I see Adolph and in the evening we will try and fix it up so we can rest easy. That was about the tone of the conversation in the store. I left. I didn't see Rich until about five or six o'clock in the evening and he told me he had seen Adolph and he was willing to give him a chattel mortgage on that stock of goods, by which I could get my money out.

Q. Rich said that to you?

A. He said that to me. I said, All right, I will be on hand in the evening; and I went over to a law-er's office and fixed it up.

Q. State whether or not there was anything said by Rich at that time requiring you to take up the notes in the bank on their hands that you were not on before he would give the mortgage.

A. Yes, sir; he said he wanted to be clear of the bank, if he does that. As I told Dougan, we would protect that note all along.

Q. You allude to that seven-thousand-dollar note?

A. Yes, sir.

Q. And these other notes?

A. Yes, sir; those on us individually.

Q. Mr. Rich, the defendant in this case, testifies that there was an arrangement between himself, you, and Adolph Hirsch that he should go to Chicago and buy these goods, and to buy such a quantity as he could, and when I should come home that David May would take part of the goods for his pay and I would affect a settlement with my creditors at twenty-five cents on a dollar, or whatever I could. State whether or not any such arrangement was made between you and Adolph Hirsch and Rich or between
156 you and Rich.

A. No, sir; there was no such arrangement existed, because Rich always promised to pay these notes out of the proceeds of these cattle Nathan was to ship.

Q. State whether or not you made any suggestion to Rich to the effect that he should go East and buy goods at this time.

A. No, sir.

Q. State whether or not you said to Rich anything about it being unsafe for a man whose credit was not good to go to Chicago in December, but he must go in January, as people only bought for cash in December.

A. I never made any such suggestion.

Q. Mr. Rich testifies in his examination that such a conversation as that took place between you, himself, and Adolph Hirsch in November, 1886.

A. No, sir.

Q. You had no such conversation?

A. No, sir.

Q. Did you ever have any such conversation with him?

A. No, sir.

Q. Did you ever make any arrangement with him whereby you was to reap any benefit by his purchasing goods in the East?

A. No, sir; I was not. I don't see where the benefit comes in.

Q. Did you leave here for California before or after Rich left for the East?

A. I left two days later—I believe one day later—the second day, probably.

Q. Did Rich say anything to you about going East to buy goods prior to his going?

A. He told me he was going East for the purpose of buying goods.

Q. Did he say anything to you as to what he would do with the goods after buying them?

A. No, sir.

Q. Did you say anything to him as to what he should do with the goods after purchasing?

A. No, sir.

Q. Did you tell him where to go to purchase goods?

A. No, sir.

157 Q. Mr. Rich testifies in his examination, on page 40, "They calculated if I went East I would be able to buy between thirty and thirty-five thousand dollars' worth, but the calculation would now work out. I couldn't get any more than I did."

—. ——.

Q. I will ask you to state whether you and Hirsch or you and Rich or you, Hirsch, and Rich had or made any calculation in reference to his buying thirty or thirty-five thousand dollars' worth of goods before he left here, or any other sum.

A. I didn't know anything about it or what he was going to do.

Q. Did you at any time, either with Rich or Hirsch, yourself and Rich, make any calculation as to the amount of goods he should buy?

A. No, sir.

Q. Did you have any arrangement with Rich whereby it was agreed between you that the goods he should buy while East at this time should be stored, a part of them, in Hirsch's warehouse, at the depot, and a part at his own store and to scratch his name off the boxes and to put the name of Dave May on them and take them to Dave May's store?

A. No, sir.

Q. Was there ever between you and Hirsch and Sam. Rich or you and Sam. Rich any such conversation?

A. No, sir; there was not.

Q. Did you have any talk with Sam. Rich in June of 1886 with reference to his making a settlement for twenty-five per cent.?

A. No, sir; I did not.

Q. Did you have any conversation with Hirsch and Rich in June, 1886, wherein you or Hirsch told him that you had looked into his affairs and saw that he was insolvent and could not pay or in which he told you that he wanted to go East to get an extension and work this matter through? Did you have any such conversation as that in June, 1886, with him?

A. No, sir.

158 Q. Mr. Rich, in his testimony, says that whenever he got short of money he went to Hirsch and Dave May and they indorsed for him in the bank for what money he needed. Is that true?

A. I only indorsed on these three papers.

Q. Simply what you have testified to?

A. That is all.

Q. It is true, then, that you assisted Mr. Rich to the extent that you have testified?

A. Yes, sir.

Q. Sam. Rich testified that when he went East this last time—in February—that he went at the suggestion of yourself and Hirsch. Did he go at your suggestion at all?

A. No, sir.

Q. Rich testifies that in the last of January you and Hirsch wanted him to go East in December, but that you—David May—made the remark that a man in his standing ought not to go in December to buy goods, because in December only merchants go East to buy goods who were in good standing and pay cash, "so they suggested I go in February about the 15th," and did you have any conversation in which you ever suggested anything like this?

A. No, sir.

Q. Did you have any conversation with him in the month of January in reference to his going East to buy goods?

A. No conversation on regard to going East; no, sir.

Q. Mr. Rich testifies that on a Sunday afternoon you went over to his store and told him that he had too many goods in his store; that when a traveling man saw the big stack of goods they would not sell him anything; "so on Sunday afternoon David May came into the store and picked out a lot of goods, and in the evening he came there with an expressman and a sled and took the goods over to his store." Did you have any conversation in purchasing
159 these goods from Rich with reference to travelling men seeing too many goods in the store?

A. No, sir; I have explained that matter.

Q. Did you have any conversation on that subject except as you have already given in your testimony?

A. No, sir. He came to me to buy the goods so he could liquidate that payment.

Q. State whether or not at the time you purchased these goods from Rich or on a Sunday afternoon you took the goods out or at any other time you said anything to Rich about not booking the account—not putting the account on his books of the sale to you.

A. I said nothing of the kind, as I expected to pay and he expected the cash.

Q. Mr. Rich says that you paid him a portion of the money for these goods in two checks and stated that the balance might be credited on the twenty-five-hundred-dollar note. Was there anything said at that time about crediting any balance on the twenty-five-hundred-dollar note or did the checks pay for the goods entirely?

A. The two checks and a little account he owed me paid the ac-

count in dollars and cents, and the last check was marked "paid in full."

Q. What was said about giving him credit on that note?

A. There was nothing said. There was nothing due. I paid him, as he knows. I will state that those checks paid the dollars and cents. If I agreed to pay anything on the note it would not come out in dollars and cents just to liquidate that bill.

Q. Mr. Rich in his testimony, on page six, says that he had a talk with you a few days before he started East; that you sat down in your office and figured out with him how much goods to buy
160 at each house, so as not to buy too many goods from one house, for the reason that they would get onto the racket. Was there any such conversation between you and he just before he went East?

A. No, sir.

Q. Was there ever any such conversation as that ever had between you and himself?

A. No, sir.

Q. Was he in your store, in your office, a few days before he left there, to talk with you on business at all?

A. No, sir; he used to come over frequently to the store, but not on confidential business that I know of.

Q. He says in that same answer that you, David May, figured that if he bought the amount of goods you figured out, then he could get a settlement of twenty-five cents and have so much left; did you have any such calculations at that with him, or any talk of that kind?

A. No, sir.

Q. Did you figure at that time or at any time with Rich that he should buy somewhere in the neighborhood of thirty-five thousand dollars' worth of goods or any other sum?

A. No, sir.

Q. Did you have any plan whatsoever between you and Hirsch and Rich or yourself and Rich alone whereby he was to make a settlement for his indebtedness?

A. No, sir.

Q. Mr. Rich testifies that on the day of his return from the East that you walked down in the back end of his office and said to him: "Well, Sam., you didn't succeed; you didn't get any of the goods we figured on." Did you say anything of that kind to him?

A. No, sir; I only said what I have previously said in my testimony.

Q. Is that all you said, what you have before stated?

A. Yes, sir; that is all.

161 Q. Did he suggest at that time to telegraph to Leopold for money and you told him not to telegraph?

A. No, sir.

Q. Did he suggest that he telegraph to Leopold?

A. No, sir.

Q. Did you say anything to him about any telegraphing?

A. No, sir; he did not; nothing spoken about it.

Q. Did you say to him at that time that Leopold would smell a rat and come out here and close Rich up?

A. No, sir.

Q. Or anything to that effect?

A. No, sir.

Q. Or anything about your getting left if he did telegraph?

A. No, sir; I simply stated that the bank required it *w*hould be fixed up, as I stated before.

Q. State whether or not you told Rich at that time that Strauss, the San Francisco man, was coming to-morrow and something had to be done on that account right away.

A. No, sir; I didn't know Strauss was coming.

Q. Did you suggest that Mr. Strauss might come or anything about Strauss?

A. No, sir.

Q. Did he say anything to you after his return from the East about the fact that it would not look well to creditors East for him to come right back and close up?

A. No, sir.

Q. Mr. Rich testifies that in that same conversation you told him that the Eastern people would see that it was a put-up job from the beginning. Did you say anything to him of that kind?

A. No, sir.

Q. Was there any put-up job about it?

A. No, sir; there was none.

Q. State whether or not at the time of the making of the mortgage heretofore alluded to you and Hirsch had a conversa-
162 tion in the private office of C. I. Thomson, in which you or Hirsch told Rich that you would put him back in the store in two or three days.

A. No, sir; we were sitting right in your presence and Mr. Thomson's all the time; no such conversation as that was had.

Q. State whether or not you at any time told Jake Rich that you would put Rich back in the possession of the store in two or three weeks.

A. No, sir.

Q. Have you read the testimony of Louis Nathan in this case?

A. I perused it this morning.

Q. Do you recollect his testifying that at the time you went to the store when the mortgage was given you asked for the key, or Rich gave you the key; that you then said to Rich, or did Hirsch say to Rich or to Mr. Thomson or I or to Rich anything about putting him back in the store or anybody else—anything about being back in possession in a few days or weeks?

A. No, sir; we went down together, Thomson, myself, Hirsch, and Rich, and after we was in there Rich says, there was the stock.

Q. Four of us?

A. Five of us. He says, There is the store. He says, Louis, where is the keys? Louis had them in his pocket. I says, Where is the

other one? He says, It is in the door; and he turned them over to me.

Q. And you was talking to this same Louis Nathan?

A. Yes, sir; we was standing together in a group there.

Q. Did you say anything to Louis Nathan on that occasion that could not and would not have been heard by Mr. Thomson, Adolph Hirsch, and myself?

A. No, sir.

Q. You were present at the time Sam. Rich signed this mortgage?

A. Yes, sir.

162½ Q. Who, if you know, was the stenographer who took it down, the writing, when it was prepared by Mr. Thomson and myself?

A. Mr. Knoblock, I believe, was his name.

Q. State, if you know, whether Rich read the mortgage or whether it was read to him prior to his signing it.

A. As near as I can recollect, you started to read it yourself, and finally you turned it over to Knoblock and he commenced and finished—in other words, he read it all over again from beginning to end. You couldn't see very well, the light was dim; he read it all over in the presence of yourself, Rich, Hirsch, and myself.

Q. You were all present at the time?

A. Yes, sir.

163 Q. And Rich heard it read over by Mr. Knoblock?

A. Yes, sir.

Q. Mr. Rich, in his testimony says, "I walked out of the office two or three times, and I didn't know whether to sign them or not, but under their promises that the stock would be returned to me, so I could settle with my creditors, I signed the papers." State whether or not you and Hirsch made any such promise as that or any promises of that kind.

A. No, sir; all I said is to get out of that stock what belongs to us, and the remainder we will turn over to him again.

Q. That was all that was said about returning it to him?

A. Yes, sir.

Q. Did you promise, as Rich says in his testimony, in June 1886, or at any other time, to assist Rich in making any settlement with his creditors?

A. No, sir.

Q. State whether or not you volunteered to go East and make a settlement for Rich?

A. No, sir.

Q. Did you ever make any proposition about going East to make a settlement for him?

A. No, sir.

Q. I will ask you to state whether or not you ever told Rudolph Ney not to deposit any more money in the bank he was collecting for Rich during his absence.

A. No, sir.

Q. Did you ever say anything to Ney on that subject at all?

A. No, sir; I never had any talk with Ney on that subject.

Q. Jake Rich, in his testimony, says that at the time we went to the store to take possession it was remarked that within two or three weeks Sam. will be back in the store. Was any such remark made by either you or Hirsch or Thomson or myself?

A. No, sir; there was not.

164 Q. Were you present so as to know if Hirsch or any of us made any such remark?

A. Yes, sir; we were all close together; we were centered right close in the office near the heater.

Q. Jake testifies that he told you that your transaction with his brother Sam. was like the James Boys' hold-ups. Did he tell you anything of the kind or did you have any conversation with him about it?

A. No, sir; I did not.

Q. How long have you been engaged in the clothing business, Mr. May?

A. For about twenty years.

Q. About how large a stock of goods have you carried in your business for the last five or six years, in this town?

A. I have carried all the way from fifty to sixty thousand dollars.

Q. Have you managed that business for yourself all the time?

A. Yes, sir.

Q. Are you familiar with the prices and value of goods in that line in this town?

A. Yes, sir.

Q. Were you acquainted with the stock of goods concerning which this controversy is about?

A. Yes, sir; I was thoroughly acquainted with it.

Q. State whether or not you took any part in making the inventory of the goods; and, if so, what it was.

A. Well, the following morning after this mortgage was executed and delivered I proceeded to invoice that stock of goods and continued to do so until we finished.

Q. Have you examined that invoice since it was made and completed, as introduced in evidence here and marked Exhibit "1"?

A. Yes, sir.

Q. State whether or not in your judgment it is a correct
165 invoice or inventory as to the amount of the goods and their value.

Objected to because he has not shown his competency to testify to that invoice as appears in Exhibit "1," as to whether it is correct or not.

Q. I have examined the inventory and every slip that was taken at that time and I know it is the correct inventory of the stock of goods that was there.

Q. Had you looked over the stock of goods so as to form an estimate as to whether or not that invoice is reasonably correct?

A. Yes, sir; I have and I say that invoice is correct—not reasonably correct, but correct.

Q. What was that stock of goods worth in this market at the time they were sold under your mortgage?

A. The stock realized from the stock of goods was a good price for a stock of goods of similar nature, to be realized under similar circumstances.

Q. If that stock of goods had been sold at retail by the mortgagees without keeping up stock, and considering the cost of making such sale and keeping the goods for that purpose, could they have been made to bring as much money as they did bring?

A. No, sir; they could not.

Q. Explain, if you will, why you answer "no" to that question.

A. I started with the intention, after we invoiced that stock, to retail it in a small way, but finding the condition the stock of goods was in I came to the conclusion that it was an utter impossibility to do so, as half the stock consisted of odds and ends, accumulated stock, broken sizes, and shelf-worn goods—goods that have accumulated in this town for six years.

166 Q. What would have been the result if you sold at retail for three or four weeks or a month?

Objected to as incompetent.

A. We would have sold the cream and the remainder would have been on our hands and we could not have realized twenty-five cents on the dollar out of them, and there would have been no earthly show of realizing our mortgage if the goods had been sold in that manner.

Q. Were you present at the time the sale of the goods was made?

A. Yes, sir.

Q. State what was done and by whom in reference to selling any goods?

A. I employed the sheriff to sell the goods for us, as there was no auctioneer in town, and he sent down his deputy to do so. He offered the goods in small quantities, single parcels, and the price bid was not sufficient to cover our mortgage; so I thought best to try and sell them in bulk, thinking they would realize more.

Q. About how many were there present at the time the sale took place?

A. There must have been thirty-five or forty.

Q. Was it or not in open daylight?

A. Yes, sir.

Q. About what time in the day was it that the sale was begun?

A. I believe half past ten or eleven. It was the forenoon, I think—eleven o'clock; somewheres in that neighborhood.

Q. State whether the mortgagees in any manner advertised the fact that the sale would take place?

A. Yes, sir; we gave due notice in the paper here.

Q. How many papers?

A. It was in the Herald, Democrat, and Chronicle.

167 Q. Do you remember for how long a time that advertisement was in the paper?

A. For about ten days, I think.

Q. Who, if you know, made the first bid upon the goods and what the amount of it was as a whole in bulk?

A. I believe Mr. Monheimer made the first bid.

Q. How much?

A. Fourteen thousand five hundred dollars.

Q. Who the next?

A. I believe Sands made the next.

Q. About what time elapsed between Monheimer's bid and Sands' bid, or how long did the sheriff have to call before he got a bid?

A. At the first he didn't have to call very long; at the latter end he kept it open sufficient, so that anybody could come in.

Q. Who made the highest bid and bought the goods?

A. Joe Shoenberg.

Q. And what was that bid?

A. Twenty thousand one hundred dollars.

Q. You had sold a few goods at retail prior to that?

A. Yes, sir.

Q. About how much did you realize on that?

A. About four hundred and fifty dollars; in that neighborhood.

Q. Have you kept an account of all those things, so you can show it?

A. Yes, sir; I have.

Q. Were you present when the invoice of the goods was made?

A. Yes, sir.

Q. State, if you will, how the invoice was made and by whom.

A. They were made by the clerks in the house at that time, and a few of the help assisted on Sunday, in order to get through. I was present nearly all the time.

Q. Did you aid and assist in making the invoice?

A. Yes, sir; I gave them instructions how to take the inventory, to take the new goods at Eastern cost, and the remainder of
168 the goods to leave to Mr. Monheimer, Selig, and myself to appraise.

Q. Then *and* I understand you the goods that had been in the store a good while——

A. Shelf-worn goods; I estimated what they were actually worth.

Q. And is that the valuation set down in this inventory?

A. Yes, sir.

Q. Do you say that that valuation was all that the goods were worth at that time and at that place?

A. Yes, sir.

Cross-examination by Judge DECKER:

Q. Mr. May, who called off in the store; how many different persons?

A. The manner I did that—I had two men in the furnishing goods, one called off and one put down.

Q. At the clothing?

A. It was done in the same manner.

Q. Did you do any part of that?

A. I staid right by and saw it done; I didn't do it myself. I watched to see it done proper.

Q. They were taking an invoice of the furnishing goods and clothing at the same time?

A. Two men at the furnishing goods and two at the clothing.

Q. Then the invoice was taken down on sheets?

A. Yes, sir.

Q. And they were given to Rudolph Ney to copy in this book?

A. They were given to me and I gave them to Rudolph Ney.

Q. Were you present when they were copied in the book?

A. Yes, sir.

Q. The whole time?

A. Yes, sir.

Q. You watched him?

A. Yes, sir.

Q. How long was he busy?

A. He finished Sunday afternoon.

169 Q. You gave him the sheets?

A. Yes, sir.

Q. Did you call off the goods as you copied them?

A. No, sir; he copied them.

Q. How long did it take him to copy them?

A. As fast as they had a sheet I handed it to him.

Q. He looked at the sheet and copied it in the book?

A. Yes, sir.

Q. Did you make a comparison of the sheets and the book?

A. Yes, sir; I did it myself.

Q. Did anybody assist you?

A. No, sir; I did it myself.

Q. Rudolph Ney didn't assist you?

A. He figured the sheets and I figured the book.

Q. A comparison of the book and sheets was done by you alone?

A. I extended the sheets and fitted them up, and he copied them in the book and in the same manner, and I went over my footings and he went over his; that was the way the thing was compared.

Q. Where is the remainder of that stock of goods now?

A. It is down at the Manhattan clothing-house, what is left.

Q. What is that, a company or a corporation?

A. It is a company.

Q. Who constitutes the company?

A. Joseph Shoenberg, Louis Shoenberg, and myself.

Q. When was that company formed?

A. Last July.

Q. Who was selling these goods before that time?

A. Mr. Shoenberg.

Q. Joseph Shoenberg?

A. Yes, sir.

Q. Do you remember when Joe Shoenberg failed?

A. Yes, sir.

Q. What time was it?

A. It was in the spring of 1881.

Q. Has he been in business in Colorado since that time?

170 A. No, sir; not until recently.

Q. When did he come to Leadville?

A. Last summer; last spring.

Q. What day did he come to Leadville?

A. I don't remember what day.

Q. The day this sale was made?

A. He came a few days before it was made; he went to Denver and came back; it must have been about the 3rd or 4th of April when he got here first.

Q. Has he been doing business for himself since he failed up to the present time?

A. Yes, sir.

Q. Where?

A. In New York city.

Q. What business there?

A. Wholesale furnishing goods; that means to say, the last two years; prior to that he was up in Dakota.

Q. Who did he make an assignment to here?

A. Jacob Schloss.

Q. Had you anything to do with that?

A. No, sir; all I had to do I endorsed his notes in his settlement.

Q. Those were the notes sued for in the Federal court?

A. Yes, sir; they had one case against us on those notes.

Q. How did Joe Shoenberg pay for the stock of goods?

A. He paid for them by a check on the bank.

Q. On what bank?

A. The Carbonate Bank of Leadville.

Q. His personal check?

A. Yes, sir.

171 ADOLPH HIRSCH, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified:

Examined in chief by A. T. GUNNELL, Esq.:

Q. State your name, age, residence, and occupation.

A. Adolph Hirsch; wholesale liquor dealer, in Leadville, Lake Co., Colo.; age, 37, and I reside in the same place.

Q. Are you one of the defendants in this suit?

A. Yes, sir.

Q. And how much business do you carry on as far as amount is concerned?

A. I do from one hundred and fifty thousand to two hundred thousand a year.

Q. Are you acquainted with the defendant Sam. Rich?

A. Yes, sir.

Q. In what way, if any, is he related to you?

A. He is a brother-in-law.

Q. How is he your brother-in-law? Did he marry your sister or you his?

A. He married my sister.

Q. I will ask you to state generally whether or not you have endeavored to assist Mr. Rich heretofore in a financial way?

Objected to as being immaterial and incompetent.

A. Yes, sir.

Q. When was the first time that he became indebted to you or you became responsible for his debts in connection with the mortgage and the matters in this suit?

A. The first time I endorsed a note for him for a thousand dollars.

Q. Tell us the circumstance of that.

A. He came to me and stated that he needed some money to meet some payments, and business was good and he wanted me to indorse a thousand-dollar note. That is a part of the indebtedness in this transaction. Then Mr. Rich wanted to go East and buy a stock of goods, about in August, and he said he could buy much
172 cheaper for cash, and if I would indorse four thousand dollars more for him. If I would do that he could buy for cash. Well, he was a brother-in-law of mine, and I often did that for lots of parties. So sometimes you don't have the money to spare in your own business. In my business you have to trust out considerable. I told him, "I will." I ask him how he stands. He said he had about thirty thousand dollars' worth of stock and owed about eleven or twelve. I didn't understand anything about the business. He told me business was dull since he bought out Nathan, and that he had about thirty thousand dollars' worth of stock, and figured that he owed twelve or thirteen thousand dollars; and I says, Sure, you can save money by buying for cash, and he says he can save a big price. For that reason I indorsed the note, and he went East to buy stock. That is the way I got in four thousand dollars.

Q. Did he use that money to buy stock for cash?

A. He told me he wanted to take that money to buy stock.

Q. Did he do it?

A. I guess so. He went East right after that.

Q. You don't know about that?

A. He got the money for that purpose—to buy goods for cash.

Q. You know he got the money?

A. He got the four thousand dollars in the Carbonate bank.

Q. Is that any part of this money embraced in this mortgage?

A. Yes, sir.

Q. Show us which note that is.

(Witness does so.)

Q. Are these the notes marked Exhibits "10" and "11"?

A. Yes, sir; those are the notes.

Q. Did he ever pay those notes?

A. No, sir.

173 Q. Have you paid them?

A. Yes, sir; at the time we took the chattel mortgage.

Q. Where were you at the time Rich went East the last time—in February?

A. Rich went East—I was over in Aspen, Glenwood, and Granite.

Q. How long had you been absent before he started East?

A. Pretty near nine days, and I met him right at the depot. He pulled out and I came in.

Q. You came in on the Denver and Rio Grande train and he went out?

A. Yes, sir.

Q. About how long after the one you came in on did he go out?

A. I didn't stay. I met him on the platform. He said, "Hallo, I am just going East." He had a little boy with him. I just come, and had a big stage ride that day and got to Granite. I didn't say nothing more. He asked me what business I done. I said, Pretty fair. I generally went over there every month; sometimes my man, sometimes me, and I went right straight across to my building on the corner of 9th street.

Q. When was the last time that you indorsed for Rich?

A. The last time that I indorsed for him I was in Chicago. I saw a dispatch coming along from Mr. Mitchel to Sam. Rich from the Carbonate bank, and Mr. Rich just left. I don't know whether he left in the morning or evening.

Q. Left Chicago, you mean?

A. He left Chicago. My brother-in-law—another brother-in-law—opened the dispatch, and he says we send this dispatch right off for Canada—Montreal; and he fixed up the same dispatch and sent it to him.

Q. You mean he repeated the dispatch to Rich?

A. Yes, sir; repeated the dispatch to Rich. Meanwhile, my brother-in-law, he begged me to telegraph to Mr. Mitchel, the
174 cashier of the bank, to say that the note was all right and I would protect it.

Q. Did you do that?

A. I was in it that far. You know how relations are and go in more, and I telegraphed, as Mr. Rich might not get the dispatch, and I did it. I telegraphed to Mr. Mitchell and said I would be responsible for the note. That was the last one. When I came home they said they wanted to have these papers fixed up, and there was one note I didn't know nothing about. Mr. Rich didn't tell me anything about it for some time—the seven-thousand-dollar note in the Carbonate bank, which he owed individually, he and his brother-in-laws. When I found out I went and asked him myself. I said, You owe another note in the bank individually. He said he did, and he said he was interested in the cattle business and would have enough to get out of it.

Q. With whom in the cattle business?

A. With Nat. Nathan.

Q. Did he say anything about Nat. Nathan going to sell some cattle?

A. He told me that at the time in the Tabor Grand, when Dave

telephoned for me to indorse another note for him. I said, "Dave, I can't do it. It is too much to ask of the bank to go, because there might be circumstances — I need the money myself." I said, I don't like to ask them. That is a little too much, and I don't like to be refused. I diden't say anything to him until Sunday night. I was at home. The telephone rung that I should come down to the Tabor Grand.

Q. Who called you through the telephone?

A. That I don't recollect—who did.

Q. Did you go to the Tabor Grand?

A. I went to the Tabor Grand and I went up into the par-
175 lor, and there was Dave and he was talking with him about it.

Q. Dave May and who else?

A. Sam. Rich. He says, If you go on that note of his he is in such a fix he must have some money, and business is very dull; and I says, Dave, I hate to do it like hell; I am on more notes now than I ever was in my life; it won't look well. He says, You consider the matter. Well, I says, I'- let him know to-morrow. Sam. came up in the morning and says, Dave is well satisfied and you better go on with him. Dave and Sam. came to my store Monday morning, and I said, I go you, and we went to the bank.

Q. How much was that note for?

A. $1,158.

Q. Is this the note marked Exhibit "8"?

A. Yes, sir; that is the note. There was another note. Sam. wanted some money; he was a little short. He wanted seven hundred and fifty dollars. He wanted me to indorse that. I guess that was the next one after this five thousand dollars. He says he pay me just as fast as he could, and he pay me two hundred and fifty dollars on the note without any further extension. He only paid two hundred and fifty dollars.

Q. Did you have any conversation with Sam. Rich in June, 1886, with reference to his business?

A. No, sir; I never had any in reference to his business. I don't know anything — his business. I don't know nothing outside of the liquor line.

Q. Up to that time—June, 1886—you hadn't loaned him any money or indorsed for him or anything of the kind?

A. No, sir; June, 1886, he didn't owe me any money, and I had nothing indorsed for him.

Q. Did you have any talk with him at that time or in that
176 month about making any settlement of his business affairs?

A. Not that I know of; not a thing.

Q. When was it he married your sister?

A. He must have married my sister just after he came home from the East, in September.

Q. In September, 1886?

A. Yes, sir.

Q. In his testimony Mr. Rich says, on page 3, in paragraph 6,

that he had an arrangement with David May and yourself to go and buy the goods that he did buy while he was gone.

A. Nothing of the kind.

Q. State whether or not he had any arrangement with you and David May, or you alone, or Dave May alone, as far as you know.

A. No, sir; he had none with me, and none that I know of with Dave May.

Q. Did he have any with you and Dave May about buying the goods?

—. No, sir.

Q. How long before he went East had it been since you had seen him at all, Rich?

A. It must be at least nine to ten days. I, as a general thing, made my trips in nine or ten days; it takes two days staging each way.

Q. Did you have any talk with him before he went East about his going to buy goods at all?

A. No, sir.

Q. Did you know at the time he went East that he was going East to buy goods?

A. I didn't know that he was going East until I met him at the depot.

Q. Didn't he tell you that he was going East?

A. Yes, sir.

Q. Did you say anything to him then about buying goods?

A. No, sir; he only asked me how business was over there.

177 Q. He says that the arrangement was that he was to buy such a quantity of goods as he could, and when he came home then May would take a part of the goods for his pay, and he would affect a settlement with his creditors at twenty-five cents on a dollar, or whatever he could. Do you know anything about such an arrangement as that?

A. No, sir.

Q. Any such agreement as that?

A. No, sir; I don't know anything about any such thing existing at that time.

Q. He says in his testimony that you and Dave May wanted him to buy thirty or thirty-five thousand dollars' worth of goods; that you had made a calculation about it. Did you at any time make any suggestion about how many goods he should buy or any at all or not?

A. I never made any suggestion that he should buy any or not buy. I didn't know of anything why he should go East.

Q. Did you ever have an arrangement with him or was there ever anything said between you and him about putting part of the goods in your warehouse at the depot?

A. No, sir; there is nothing there but liquors and beer.

Q. Did you ever have any arrangement that he should put any goods there?

A. No, sir.

Q. Did you ever hear anything about the question of his put-

ting goods in your warehouse until you heard it in the deposition here?

A. The first statement I heard was in Denver, when the deposition was taken.

Q. That was the first you heard of its being put in your warehouse?

A. Yes, sir.

Q. Now, he says in this deposition that you and May had looked into this business and found that he was insolvent and could
178 not pay up, and that he told you he wanted to go East and get an extension and work this matter through. State whether or not you ever looked into his affairs enough to know whether he was insolvent or not up to the time the bank began to crowd him.

A. No, sir; the only statement he gave me was that he owed about twelve thousand dollars and had thirty thousand dollars' worth of goods, and put that on paper in my office.

Q. Did you tell him that you had looked into his affairs and found him to be insolvent?

A. No, sir.

Q. Were you present at the time the goods were delivered to Dave May after the mortgage was given?

A. Yes, sir.

Q. State whether or not there was anything said on that occasion about giving Rich the possession of the goods again in a few days or in a few weeks.

A. There was nothing said about it. We was going to get our money out of it and then we was going to turn it over to Mr. Rich, the same as the chattel mortgage called for.

Q. State whether or not you at any time said to Mr. Rich or Louis Nathan or Jake Rich, or in the hearing of either or any of them or anybody else, that this mortgage was given merely to blind the creditors.

A. No, sir; that was given to pay our money and the bank money.

Q. Did you ever know of Dave May saying anything of the kind?

A. No, sir.

Q. Was it a fact that the mortgage was given for nothing else than as set forth in the mortgage?

A. Only as set forth in the mortgage, and we had to take his individual note in the bank.

Q. Were you present when Rich signed the mortgage?

A. Yes, sir.

Q. Had you and Dave May paid or assumed the indebt-
179 edness the mortgage was given to cover?

A. Yes, sir.

Q. And that was the consideration for the mortgage, wasn't it?

A. A. That was the consideration for the mortgage.

A. State whether or not that mortgage was read to Rich before he signed it.

A. I think, Judge, you started in to read the mortgage and then

you turned it over to the stenographer to read—what was his name, Knoblock?—and he read it from beginning to end; I think he started in on the front page.

Q. State whether or not during the time the mortgage was being prepared you and Dave May, with Rich, went into Thomson's private room and there told him that you would stay by him, and if he would give you the mortgage you would turn the goods back to him in a few days, or anything of that kind.

A. There was no such thing made.

Q. State whether or not he made the mortgage knowing all the circumstances, why it was given, and all about it.

A. He knew the circumstances, that the bank wanted their money and wanted to be satisfied, not alone his individually, but also ours, which was past due.

Q. Had the bank been crowding you about it?

A. Yes, sir; when I got back they said they wanted to have some money, and I said we will see when Rich gets back; and they would like to have me indorse his individual note, which I refused to do.

Q. State, Mr. Hirsch, whether there was any agreement or understanding between you and Rich, or you and Rich and May, that he should go East and buy goods in order to get a supply of goods for the purpose of paying you off and swindling the people that he got the goods of.

A. No, sir; the note I indorse, me and Dave May for Sam.
180 Rich, he was going to have the money pretty soon from Ed. Nathan, out of these cattle; he was going to have at least seventy-five hundred dollars, and take up this note and put the balance on my note, two or three times. He stated at the time that cattle was a little low, otherwise they would have disposed of them before.

Q. Did you hear the testimony of N. H. Thorne?

A. Yes, sir.

Q. How long have you known Thorne?

A. I knew him when he was in business with Mr. Schafer; I got acquainted with him then.

Q. Do you know what his reputation is in this community for truth or veracity—whether good or bad?

A. He failed here; he busted, and his partner here says he cheated him to death.

Complainants here move to strike out the answer of the witness as not being responsive to the question and immaterial and irrelevant.

Q. The question is, do you know what his reputation among the people is?

A. His reputation is not very good and his credit is very poor.

Q. Do you know in whose name he is doing business?

A. In his wife's name.

Motion by complainants to strike out as being immaterial, incompetent, and irrelevant.

Q. Did you hear the testimony of N. H. Thorne with reference to his having a talk with you the day after the taking of the mortgage?

A. Yes, sir; I heard it.

Q. He says in his deposition that he saw you at his store and asked, "What about this affair of last night?" and that you said to him that this change was made to blind the creditors; that Sam.
181 couldn't go on any further, and we thought the best thing that we could do was to make this change, and when I told about my money he said, You need not fear: we will pay you your money. Says I, What do you mean? We will pay you, says he; either I or May; but don't attach or don't make any noise, because Sam. will be back again in the store inside of two or three days. Now I will ask you to state whether or not you had any such conversation with Thorne; whether you made these statements to Thorne or not.

A. No, sir.

Q. Do you remember of having a conversation with him about that time?

A. Yes, sir. I went down in the morning to my store—to Rich's store—and Mr. Thorne halloed to me, "I want to see you." I says, What is it? He says, "What is the matter with Sam.?" I says, "Nothing the matter with Sam." He gave us a chattel mortgage for so much money, which we took. Well, he says, he owes me six hundred and fifty dollars. I says, I don't know anything about it. Well, he says, is there any show to get anything? I says, As soon as we get our money we will turn it over to Sam. and to the creditors, so they get their bills. I never made myself responsible to him at all.

Q. You said all you wanted was for you to get your money out of the stock, and after that the creditors could have the balance.

A. Yes, sir; that was the very words I told him.

Q. Do you recollect of another conversation with him nine or ten days after that?

A. He asked me in a certain way. I don't know where he asked me, but I told him finally if he got any money coming from Sam. Rich, he better go and get it. I have nothing to do with it. I have enough of my own bills to pay and to get when we turn it over, and that is just the words I told him again,
182 and then he went off.

Q. Did you tell him at all, at that time or at any time, that the change was made to blind creditors and that all the people here would get their money, but Chicago creditors would be beaten, or anything of that kind?

A. No, sir.

Q. Did you have any other conversation than these two with Thorne?

A. No, sir; I never spoke to him any more after that.

Q. Jake Rich says in his deposition that he had a conversation with you, in which he told you that you and May had ruined Rich, or words to that effect, and that you were robbing the creditors;

that you answered that you go to hell and be damned, and Chicago people can go—something else.

A. I never answered him in that way. I met Mr. Jake Rich on the sidewalk between 5th and 6th streets. He said, You left your sister penniless—something like that. I said I only got my own money that Sam. Rich got, and I says when the others get through you can have the balance. I said if he made himself poor he made it himself. I said nothing about my creditors or Chicago creditors. He said I made my sister poor.

Q. I will ask you to state if you ever at any time gave Rudolph Ney any instructions with reference to what he should do with the m-ney he was collecting for Rich during Rich's absence. Did you tell him he should deposit no more of it in the bank or anything about it?

A. I did not know that Rudolph Ney was collecting Rich's money until I came home from Aspen, and the next day — told me that Rich wanted him to collect the money and deposit it in the bank, and I didn't know anything about it; that he even carried the money for some time, until finally he said the bank wouldn't
183 give him any credit for the money, and that they needed money to pay freight and expenses and to pay his wife some money, etc., and he couldn't pull any money out of the bank, and Rich told him to deposit the money in the bank, and that the bank only gave him credit on the note. He says I can't give his wife any money and nobody any money; there was small bills which Rich owed which he paid. I know he paid a debt to a party of whom Rich borrowed some money.

Q. Out of these funds?

A. Yes, sir; and he said he didn't know what to do. I said, I have nothing to do with it; you do what seems for the best. About two or three weeks later Rudolph went to Aspen and Glenwood and wanted me to go and get the money. I believe I got it a couple of times; then they telephoned me a couple of times.

Cross-examination by Judge DECKER:

Q. Have you got the written statement that Rich made to you where he said his indebtedness was twelve thousand dollars and the goods on hand were worth thirty thousand dollars?

A. He wrote it up on a piece of paper and figured up that amount.

Q. Have you got that paper?

A. No, sir; he kept that paper himself.

Q. I thought you said he gave it to you?

A. No, sir; he made that statement. I said, I want to see how much you owe before I give you that four thousand dollars. He said he owed between eleven and twelve thousand dollars and had thirty thousand dollars' worth of goods.

Q. Now, that note for $1,158, what were the circumstances
184 of his giving that?

A. That is the note; that is the statement he made that

he was going to get the money from Nathan Brothers, in which he was interested in the cattle ranch.

Q. Was it the time you indorsed that note for him, the note marked Exhibit "8," that he made that statement?

A. No; that is the time he made the statement he would get the money from Nathan Brothers when he was telephoning from the Tabor Grand. That is the very note.

Q. What time of the year was that when he telephoned you at the Tabor Grand?

A. It was in February.

Q. 1887?

A. Yes, sir; somewhere there.

Q. Now, then, you gave one note for fifteen hundred dollars and another one for twenty-five hundred dollars. Was that the time he made the statement to you?

A. That is the time he made a statement that he owed twelve thousand dollars and had thirty thousand dollars' worth of goods.

Q. That was the 5th day of August, 1886?

A. Yes, sir; the beginning of August. He wanted this money to go East and buy goods for cash.

Q. Now, Mr. Hirsh, when did you first hear of the seven-thousand-dollar note?

A. When I heard it first?

Q. Yes, sir.

A. I heard it the time I came back from Chicago.

Q. When did you come back from Chicago?

A. I came back from Chicago twice. I got back in the beginning of March. I got back from Chicago——

Q. In 1887?

A. Yes, sir.

Q. You got back from Aspen on the 14th or 15th of February, did you?

A. Which trip do you mean? When I got back from Aspen?

185 Q. You met Sam. Rich as he was going away?

A. I met him at the depot.

Q. You just got back from Aspen?

A. Yes, sir.

Q. That was about the middle of February?

A. I don't recollect the date. I met him *on* the depot when he went out and I came in.

Q. If he started the 14th or 15th of February, you came in at that time?

A. Yes, sir.

Q. Were you not in Leadville between the 28th of February and the 7th day of March?

A. I might and I might not.

Q. Were you in Leadville between the 7th of March and the 24th of March, when Rich returned?

A. Between the 24th of March — the 7th of March?

Q. Yes, sir; and the 24th of March, when Rich returned?

A. I was home when Rich returned.

Q. Wasn't you home all the while between the 7th of March and the 24th of March?

A. I was home part of the time and away part of the time, going to Red Cliff or Kokomo.

Q. You was in the State?

A. Yes, sir; except that Chicago trip.

Q. How long were you in Chicago?

A. Two or three days.

Q. Now, didn't John McNeal ask you to indorse that seven-thousand-dollar note before he left the bank?

A. No, sir.

Q. Before he left the Carbonate bank?

A. No, sir; he never asked me. Mr. Dougan asked me.

Q. About the time John McNeal left?

A. Mr. Dougan asked me to indorse that note when I came back.

Q. From where?

A. From Chicago.

Q. Was you in Chicago in February?

A. I was in Chicago—I can't tell you exactly—between the end of February and the 4th.

186 Q. What is it?

A. The end of February. I must have arrived in Chicago in the end of February.

Q. You admit of having a conversation with Mr. Thorne the day after this chattel mortgage was made?

A. What he asked me—this question?

Q. You say you had a conversation with him on that day?

A. Yes, sir.

Q. At his place of business?

A. Right in front of his store, on the sidewalk.

Q. Then the other conversation—the second one he mentions—is a fact; you had a conversation with him up at your place?

A. I don't know where I had the second conversation exactly; he came and told me something what Judge Gunnel was saying, and I said, It don't make any difference; if you have any money coming, go to Rich and get it; I don't owe you anything.

Q. Didn't you know of that seven-thousand-dollar note being in the bank before you returned from Chicago?

A. I don't think so, because he never told me anything.

Q. Will you swear you didn't know that note was there before you returned from Chicago?

A. I don't know exactly the time of the change. I know when Mr. Mitchell showed me the note, and he says, This note has got to be covered and protected; and he says, Do you want to indorse it? And I says, No.

Q. Didn't you know of that note being in the bank before that time?

A. I don't recollect it, I don't.

Q. You won't swear you didn't know it was there, will you?

A. No; I can't tell exactly the time.

187 Q. You don't remember now whether you did know of its being in the bank or not before that time?

A. I don't recollect.

Q. But you won't say you did not know of its existence?

A. It is safe, because I don't recollect that I did know.

Q. Didn't you ask Sam. Rich in October or November, along there some time, to go to Denver and get Nat. Nathan to come and protect that seven-thousand-dollar note?

A. I did not.

Q. Didn't you talk with Sam. Rich about it?

A. No, sir.

It is hereby stipulated and agreed by and between the respective counsel in this case that any and all notice of the closing of the testimony on the part of the complainants is hereby waived by defendants' counsel, and that the testimony-in-chief on behalf of the plaintiff is closed; further, that the depositions of the several witnesses taken by the complainants and defendants May and Hirsch may be read in evidence upon the trial and the signing of the same by the witnesses is hereby waived on the part of both parties.

188 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, Sitting within and for said District.

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAM. RICH *et al.*, Defendants. } No. 2149.

It is hereby stipulated and agreed by the parties to the above suit that the testimony in said cause to be taken by either the complainant or defendants shall be taken in the city of Leadville, county of Lake, State of Colorado, before Chas. A. Hinckley, a notary public in and for said county, commencing at ten o'clock a. m. on the 25th day of October, 1887, and to continue from day to day thereafter until the testimony to be taken in said county of Lake, on the part of both the complainants and the defendants, shall be completed; the complainants shall first complete the taking of *his* testimony before said notary public, after which the said defendants shall immediately take all the testimony to be taken on their part before said notary public in the said county of Lake.

W. S. DECKER,
Solicitor for Comp't.

CHAS. I. THOMSON,
For Hirsch & May, Def't-.

189 EXHIBIT "A."

Rec'v'd	Febr'y	14, '86		$60 00
"	"	15		45 00
"	"	16		60 00
"	"	19		51 00
"	"	21		25 00
"	"	22		40 00
"	"	23		60 00
"	"	24		25 00
"	"	26		110 75
"	"	28		50 00
"	March	7		107 00
"	"	10		125 00
"	"	12		195 00
"	"	14		160 00
"	"	16		80 00
"	"	17	(1,299.75)	100 00
"	"	18		30 00
"	"	19		60 00
"	"	20		60 00
				1,443 75

(S'g'd) CHAS. A. HINCKLEY.

EXHIBIT " 2 " (C. A. H.).

Know all men by these presents that whereas Samuel Rich, of the city of Leadville, in the county of Lake and State of Colorado, and Nathan and Company, E. Nathan and Nat. Nathan, on the 10 day of December, 1885, executed their promissory note whereby they promised to pay to the Carbonate Bank of Leadville, Colorado, the sum of seven thousand dollars ($7,000.00), on which said note there was paid Sep. 11th, A. D. 1886, the sum of five hundred dollars ($500), and on the 14th day of September, A. D. 1886, the sum of three hundred dollars ($300), and on which the interest was paid to November 11th, A. D. 1886, and which note the said Samuel Rich is legally bound to pay;

190 And whereas the said Samuel Rich on the 14th day of July, A. D. 1886, executed his promissory note whereby sixty days after the date thereof he promised to pay to the Carbonate Bank of Leadville, Colorado, the sum of one thousand dollars ($1,000.00), on which said note the interest has been paid to January 30th, A. D. 1887, and the payment of which said note is for a valuable consideration guaranteed by A. Hirsch;

And whereas the said Samuel Rich on the second day of August, A. D. 1886, executed his promissory note whereby he promised sixty days after the date thereof to pay to the Carbonate Bank of Leadville, Colorado, the sum of fifteen hundred dollars ($1,500.00),

on which said note the interest has been paid to January 30th, A. D. 1887, and the payment of which said note is for a valuable consideration guaranteed by the said A. Hirsch;

And whereas the said Samuel Rich on the 2nd day of August, A. D. 1886, executed his promissory note whereby he promised ninety days after the date thereof to pay to the Carbonate Bank of Leadville, Colorado, the sum of twenty-five hundred dollars, on which said note the interest has been paid to January 30th, A. D. 1887, and the payment of which said note is for a valuable consideration guaranteed by the said A. Hirsch;

And whereas on the 7th day of December, A. D. 1886, the said Ed. Nathan and Nat. Nathan executed their promissory note whereby they promised to pay to the Carbonate Bank of Leadville, Colorado, ninety days after the date thereof the sum of twenty-five
191 hundred dollars ($2,500.00), the payment of which said note is guaranteed by the said Samuel Rich and also by S. Hirsch and by David May;

And whereas the said Samuel Rich on the 18th day of January, A. D. 1887, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, on February 1st, A. D. 1887, the sum of seven hundred and fifty dollars ($750), on which said note there was paid February 3d, A. D. 1887, the sum of two hundred and fifty dollars, and the payment of which said note is for a valuable consideration guaranteed by the said A. Hirsch;

And whereas the said Samuel Rich on the 5th day of February, A. D. 1887, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, forty-five days after the date thereof the sum of eleven hundred and fifty-eight dollars ($1,158.00), the payment of which said note is for a valuable consideration guaranteed by the said A. Hirsch and the said David May;

And whereas the said Samuel Rich on the 10th day of February, A. D. 1886, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, thirty days after the date thereof fifteen hundred dollars ($1,500.00), which said note is signed by the said David May as surety for the said Samuel Rich, and on which note there was paid February 16th, A. D. 1887,
192 fifty-five dollars ($55.00); February 17th, A. D. 1887, sixty dollars ($60.00); February 24th, A. D. 1887, ninety-six dollars ($96.00), and March 1st, A. D. 1887, one hundred eighty-five and $\frac{75}{100}$ dollars ($185.75);

And whereas on the 4th day of March, A. D. 1887, the said Samuel Rich executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, twenty days after the date thereof the sum of eleven hundred and seventy dollars ($1,170.00), which said note is signed by the said A. Hirsch as surety for the said Samuel Rich, and on which said note there was paid on the fourth day of March, A. D. 1887, the sum of five dollars ($5.00); all of which said notes bear interest at the rate of one and one-fourth per cent. per month;

And whereas said notes are all now due, and, except as hereinbefore stated, unpaid;

And whereas the said Samuel Rich is legally liable to pay the whole amount due on said notes, and is unable to pay the same or any part thereof;

And whereas the said The Carbonate Bank of Leadville, Colorado, threatens to commence suit by attachment against the said Samuel Rich on the note first hereinbefore mentioned, and to attach the property hereinafter mentioned of the said Samuel Rich;

And whereas the said A. Hirsch and David May have as-
193 sumed the payment of said note and have become liable and responsible therefor to said bank;

And whereas the said David May and A. Hirsch are legally liable and responsible for the amount due on the residue of said notes, each for a certain portion thereof, and have agreed to take up and pay the same:

Now, therefore, in consideration of the premises and in consideration of the sum of one dollar ($1.00) to the said Samuel Rich in hand paid by the said David May and A. Hirsch, the receipt whereof is hereby acknowledged, the same Samuel Rich has granted, bargained, and sold, and by these presents does grant, bargain, and sell, unto the said David May and A. Hirsch—

All that certain stock of men's, boys', and children's clothing, hats, caps, and gents' furnishing goods, being and contained in that certain store-room, in the city of Leadville, county of Lake and State of Colorado, known as No. 313 Harrison avenue, together with all and singular the show-cases, counters, shelving, chandeliers, and all other property of every kind in said room pertaining to the business of the said Samuel Rich, which said stock of goods is the property of the said Samuel Rich and now in his possession in said place:

To have and to hold all and singular the said goods and chattels unto the said David May and A. Hirsch, their heirs, administrators, and assigns forever.

193½ And the said Samuel Rich, for himself, his heirs, executors, and administrators, does hereby covenant to and with the said David May and A. Hirsch and their assigns that he is legally possessed of the said goods and chattels as of his own property; that the same are free and clear from all incumbrances, and that he will and does warrant and defend the same to the said David May and A. Hirsch and their assigns against the legal claims and demands of all persons.

The said David May and A. Hirsch shall take the immediate possession of all of said goods and chattels and of the said room in which they are contained as aforesaid, and shall proceed to sell and dispose of the same with reasonable diligence at private or public sale, as they may deem best, and out of the proceeds of such sale of said goods and chattels pay:

1st. The amount due on said notes, with the interest thereon, and the costs and expenses of such sale.

2nd. Rendering the surplus, if any, to the said Samuel Rich, his executors, administrators, or assigns.

Provided, however, that if the said Samuel Rich shall, at any time before a sufficient quantity of said goods and chattels shall be so sold — to realize a sum sufficient to pay said amount due and said expenses, pay to the said David May and A. Hirsch or their assigns the amount due on said notes or the balance which may be due thereon after deducting the net amount realized from such sale, then these presents shall be void and the residue of said goods remaining unsold shall be delivered to the said Samuel
194 Rich and possession thereof restored to him.

In witness whereof the said Samuel Rich has hereunto set his hand and seal this twenty-fourth day of March, A. D. 1887.

(Signed) SAM. RICH. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF COLORADO, } ss:
County of Lake, }

I hereby certify that this chattel mortgage was acknowledged before me by Samuel Rich, whose name is above subscribed this twenty-fourth day of March, A. D. 1887.

[SEAL.] (Signed) JAMES B. KNOBLOCK,
Notary Public.

(Indorsed:) 6522. Ex. "2." Chas. A. Hinckley.

STATE OF COLORADO, } ss:
County of Lake, }

Filed for record at 8.35 o'clock a. m. Mar. 25, 1887, and duly recorded in Book 91, page 383.

(Signed) F. M. REARDON, *Recorder.*

Fees, $2.50.

(Signed) D. MAY.

195 EXHIBIT NO. "3."

No. 4281. $2,500. LEADVILLE, COLORADO, *Dec.* 7, 1886.

Ninety days after date we promise to pay to the order of
Due: Samuel Rich the sum of twenty-five hundred dollars, at the
24 Carbonate bank, in Leadville, Colorado, for value received,
31 with interest, at the rate of one & ¼ per cent. per month,
28 from maturity until paid.
— M'ch 10.
83 ED. NATHAN.
10 NAT. NATHAN.

(Indorsed:) Sam. Rich. S. Hirsch. 3, 10, '87. Protest waived. D. May. David May.

EXHIBIT "4," C. A. H.

JANUARY 10, 1887.

David May bought of Sam. Rich:

4	overcoats	@	9 00	36 00
3	"	"	9 00	27 00
3	"	"	9 00	27 00
2	"	"	9 00	18 00
6	men's suits	"	10 00	60 00
3	coats & vest	"	7 50	22 50
12	suits	"	9 00	108 00
4	suits	"	9 00	36 00
2	coats & vests	"	6 00	12 00
2	suits	"	8 00	16 00
1	coat & vest			5 00
9	cardigan jackets	"	1 25	11 50
4	" "	"	2 00	8 00
	1 sleigh robe			2 50
196	4 pair- suspenders	@	1 25	5 00
	2 doz. shirts (calico)	"	7 50	15 00
9	" " "	"	7 00	63 00
17	" white cotton socks	"	1 25	21 25
13	" " "	"	1 25	16 25
21	" mixed " "	"	60	12 60
Lot 150,	6 doz. Oregon City flannel dr. & sh'ts	"	12 00	72 00
3	" " " shirts	"	12 00	36 00
3	" "	"	15 00	45 00
				676 10

(Indorsed:) Invoice, Sam. Rich. 1, 10, '87.

EXHIBIT "5."

(D. May, 318 Harrison Ave.)

No. 1735. LEADVILLE, COLORADO, 1, 10, 1887.

The Carbonate bank, Leadville,

Pay to the order of Sam'l Rich three hundred and fifty dollars. ($350.00.) D. MAY.

[Stamp: The Carbonate bank. Paid Jan. 10, 1887. Leadville, Colorado.]

(Indorsed:) Sam. Rich.

Exhibit 5, C. A. H.

197 EXHIBIT "6."

(D. May, 318 Harrison Ave., in full of ac., Jan. 10, '87.)

No. 1742. LEADVILLE, COLORADO, 1, 14, 1887.

The Carbonate bank, Leadville,

Pay to the order of Sam. Rich three hundred and six $\frac{30}{100}$ dollars. ($306.30.)

(S'g'd) D. MAY.

[Stamp: The Carbonate bank. Paid Jan. 14, 1887. Leadville, Colorado.]

(Indorsed:) (S'g'd) Sam. Rich.

(Exhibit 6, C. A. H.)

EXHIBIT "7."

No. 4532. $1,500. LEADVILLE, COLORADO, *Feb.* 10, 1887.

Thirty days after date we or either of us promise to pay to
Due: the order of the Carbonate bank the sum of fifteen hundred
18 dollars, at the Carbonate bank, in Leadville, Colorado, for
12 value received, with interest, at the rate of one & $\frac{1}{2}$ per cent. per mo., from maturity until paid, without grace.

M'ch 12.

(S'g'd) SAM. RICH.
(S'g'd) DAVID MAY.

(Indorsed:)
Paid $55.00, 2, 16, '87.
" 60.00, 2, 17, '87.
" 90.00, 2, 24, '87.
" 185.75, 3, 1, '87.

(Exhibit 7, C. A. H.)

EXHIBIT "8."

No. 4506. $1,158.00. LEADVILLE, COLORADO, *Febr'y* 5, 1887.

Forty-five days after date we or either of us promise to pay
Due: to the order of the Carbonate bank the sum of eleven hundred
23 fifty-eight dollars, at the Carbonate bank, in Leadville, Col-
22 orado, for value received, with interest, at the rate of one & $\frac{1}{2}$ per cent. per mo., from date until paid, without grace.

M'ch 22.

(S'g'd) SAM. RICH.

(Indorsed:) For and in consideration of the sum of ten cents, the receipt whereof is hereby acknowledged, we do hereby guarantee the payment of the within note at maturity, waiving demand and protest and notice of non-payment, and agree to pay all expenses paid or incurred in collecting same. A. Hirsch, David May.

(Exhibit 8, C. A. H.)

198 EXHIBIT "9."

No. 3621. $7,000.00. LEADVILLE, COLORADO, *Dec.* 10, 1885.

Twenty days after date we or either of us promise to pay to the order of the Carbonate bank the sum of seven thousand dollars, at the Carbonate bank, in Leadville, Colorado, for value received, with interest, at the rate of one & ¼ per cent. per mo., from due until paid, without grace; and we severally hereby consent to the extension of payment of this note from time to time without notice.

Due: Dec. 30, Aug. 27, Sep. 11, Sep. 30.

(S'g'd) NATHAN & CO.
" E. NATHAN.
" SAMUEL RICH.
" NATHANIEL NATHAN.

(Indorsed:)
Paid int. to Jan. 29, '85, $87.50.
" " Feb. 28, '86, 87.50.
" " M'ch 28, '86, 87.50.
" " Ap'l 28, '86, 87.50.
" " May 28, '86, 87.50.
" " June 28, '86, 87.50.
" " July 28, '86, 87.50.
" " Aug. 27, '86, 87.50.
" " Sep. 11, '86, 43.75.
" prin. Sep. 11, 500.00.
" " Sep. 14, 300.00.
" int. to Nov. 11, 159.76.

Pay to David May and A. Hirsch or order, without recourse on us.

(S'g'd) J. C. MITCHELL & CO.

(Ex. "9," C. A. H.)

EXHIBIT 11.

No. 3648. $2,500. LEADVILLE, COLORADO, *Aug. 2nd*, 1886.

Due: 29 30 31 — 90 Ninety days after date we or either of us promise to pay to the order of the Carbonate bank the sum of twenty-five hundred dollars, at the Carbonate bank, in Leadville, Colorado, for value received, with interest, at the rate of 1¼ per cent. per month, from due until paid, without grace.

(Signed) SAM. RICH.

[Endorsed:] For and in consideration of the sum of two cents, the receipt whereof is hereby acknowledged, I do hereby guarantee the payment of the within note at maturity, waiving demand and pro-

test and notice of non-payment, and agree to pay all expenses paid or incurred in collecting the same. (Signed) A. Hirsch.

Int., $31.25, paid to 1, 30, '87.

Exhibit 11, C. A. H.

(Exhibit 10 on next page.)

199 EXHIBIT 10.

37.50.

No. 3647. $1,500. LEADVILLE, COLORADO, *Aug. 2nd*, 1886.

Due: 29 30 1 Sixty days after date we or either of us promise to pay to the order of the Carbonate bank the sum of fifteen hundred dollars, at the Carbonate bank, in Leadville, Colorado, for value received, with interest, at the rate of one and ¼ per cent. per month, from due until paid, without grace.

(Signed) SAM. RICH.

Oct. 1.
Nov. 30, $37.50.
Dec. 30, $18.75.

(Indorsement:) For and in consideration of the sum of ten cents, the receipt whereof is hereby acknowledged, I do hereby guarantee the payment of the within note at maturity, waiving demand and protest and notice of non-payment, and agree to pay all expenses paid or incurred in collecting same. (Signed) A. Hirsch.

Int., 18.75, paid to 1, 30, '87. 33.75.

Exhibit 10, C. A. H.

EXHIBIT 12.

No. 4634. $1,170. LEADVILLE, COLORADO, *March* 4, 1887.

Due: M'ch 24. Twenty days after date we or either of us promise to pay to the order of the Carbonate bank the sum of eleven hundred and seventy dollars, at the Carbonate bank, in Leadville, Colorado, for value received, with interest, at the rate of 1 and ½ per cent. per mo., from date until paid, without grace.

(Signed) SAM. RICH.
" A. HIRSCH.

Indorsed: P'd, 3, 4, 5.00.

(Exhibit 12) C. A. H.

EXHIBIT 13.

4.50.

No. 4434. $750. LEADVILLE, COLORADO, *Jan'y* 18, 1887.

Due: Feb. 1, '87. Feb. 1st, after date, we or either of us promise to pay to the order of the Carbonate bank the sum of seven hundred and fifty dollars, at the Carbonate bank, in Leadville, value received, with interest, at the rate of one — ¼ per cent. per mo., from maturity until paid, without grace.

(Signed) SAM. RICH.

(Indorsed:) For and in consideration of the sum of ten cents, the receipt whereof is hereby acknowledged, I do hereby guarantee the payment of the within note at maturity, waiving demand and protest and notice of non-payment, and agree to pay all expenses paid or incurred in collecting same. (S'g'd) A. Hirsch.

Paid $250.00, 2, 3, '87. 11.06.

Exhibit 13, C. A. H.

200 EXHIBIT 14.

25 M.

No. 3577. $1,000. LEADVILLE, COLORADO, *July* 14, 1886.

Due: 17 31 12 Sixty days after date we or either of us promise to — to the order of the Carbonate bank the sum of one thousand dollars, at the Carbonate bank, in Leadville, Colorado, for value received, with interest, at the rate of one — ¼ per cent. per month, from due until paid, without grace.

(Signed) SAM. RICH.
" A. HIRSCH.

Sept. 12.
Nov. 30, $33.75.
Dec. 30, $12.50.

(Indorsed:) Int., 12.50, paid to 1, 30, '87.

Ex. 14, C. A. H.

201 EXHIBIT 1 (Chas. A Hinckley).

Inventory Taken M'ch 25, 1887.

8512	8	worsted suits	13	----	104
8361	3	cash. "	13	----	39
8665	5	" "	13	----	65
8505	8	" "	16	----	128
8504	6	" "	16	----	96
8509	8	" "	12	----	96

123	1 worsted suit		13		13
2711	2 "		13		26
8542	7 "		14		98
8949	7 "		7		49
2100	1 "		14		14
6632	1 "				8
3105	1 "				7
4629	2 "		13		26
6634	6 "		8		48
5758	5 "		8		40
5046	4 "		13		52
5089	3 "		12		36
4870	1 "				16
4998	1 "				17
3741	1 "				14
2100	1 "				13
3425	2 "		12		24
3588	1 "		1		16
3904	1 "				9
4016	1 "				16
4842	3 "		15		45
2741	2 "		16		32
2728	1 C. & V. suit				10
2730	1 W. C. "				14
2958	2 " "		19		38
4333	1 " "				17
8540	6 " "		14		84
2958	1 C. & V. "				8
8546	8 cash. "		14		112
8674	6 " "		14		84
8578	5 " "		13		65
					1,594
	Am't br. over				1,594
8500	8 cash. suits		13		104
8502	7 "		13		91
8637	4 "		12		48
8907	7 "		5.50		38 50
8905	8 "		4.50		36
8628	7 "		7.50		52 50
1128	2 "		6		12
1129	1 "		6		6
202					
1654	4 cash. suits		8		32 00
4778	8 "		13		104 00
1181	2 "		8		16 00
1319	6 "		9		54 00
1801	12 "		10		120 00
3332	3 "		8		24 00

6632	4 cash. suits	7.50		30 00
3105	5 "	7		35 00
6759	6 "	12		72 00
6711	4 "	12		48 00
6829	4 "	16		64 00
6755	6 "	13		78 00
6883	9 "	16		144 00
6727	8 "	15		120 00
8382	6 "	9		54 00
8655	7 "	10		70 00
8353	7 "	13		91 00
8389	9 "	13		117 00
3093	2 "	13		26 00
9817	1 "			14 00
9966	1 "			10 00
2826	1 "			10 00
7151	worsted suit			10 00
6427	1			7 00
"	1 "			7 00
"	1 "			7 00
6616	1 "			10 00
3784	4 "	17		68 00
				3,424
	Am't b't over			3,424 00
7882	2 worsted suits	8		16 00
"	1 "			7 00
"	1 "			10 00
4669	3 "	8		24 00
3687	1 "			9 00
9048	1 "			10 00
7862	2 "	9		18 00
7876	1 "			8 00
2004	1 "			10 00
	36 corduroy suits	8		288 00
4916	8 cash. suits	10		80 00
4969	6 "	14		84 00
3744	3 "	15		45 00
4667	5 "	13		65 00
4812	6 "	13		78 00
6615	1 "			10 00
3637	1 "			9 00
8985	1 "			4 00
	2 "	8		16 00
7882	2 "	8		16 00
3784	2 "	12		24 00
2543	1 "			9 00
	1 "			7 00
8415	1 "			9 00
8427	1 "			8 00

203

2826	1	cash. suit			11 00
1331	1	worsted suits			10 00
3093	2	"	13		26 00
1088	1	"			8 00
5739	1	"			19 00
6106	1	"			8 00
	,	"			4 00
	1	"			10 00
7193	1	"			6 00
1702	1	"			10 00
6831	1	"			8 00
					4,408 00
		Am't b't over			4,408 00
3593	1	W. suits			13 00
3726	1	"			9 00
1441	3	"			5 00
1515	2	"			5 00
1438	1	"			6 00
3532	1	"			5 00
8514	1	"			16 00
		Odd coats & vests.			
	39	W. coats & vests	5		195 00
	15	" light suits	4		60 00
	10	odd C. & V.	3		30 00
2967	5	Melton	11		66 00
	3	pair- pans	3		3 00
47416		cash. suits	13		78 00
17021	1	cash. suits	10		110 00
41195		"	13		65 00
3339 & 3070	39	"	12		108 00
	4	odd suits	8		32 00
	1	"			10 00
	3	"	8.50		25 50
	1	"			10 00
9653	2	"	11		22 00
2187	2	satin suits	20		40 00
	1	W. suits			15 00
1066	3	"	12		36 00
4659	1	"			15 00
9653	1	"			11 00
9866	1	"			12 00
3294	1	"			10 00
4622	1	"			20 00
4971	5	"	14		70 00
9868	1	"			16 00

8858	3 W. suits			30 00
1880	7 "		10	70 00
8646	1 "			9 50
7010	2 "		13	26 00
				5,662 00

204

	Amount bro't over			5,662 00
	1 coat & vest			8 00
	1 " "			10 00
3294	1 " "			8 00
8628	1 " "			7 00
2854	4 " "		10	40 00
	1 " "			7 00
9653	1 W. suit			11 00
4680	1 "			18 00
2585	1 "			13 00
3942	1 "			16 00
4851	1 "			13 00
8396	2 "		16	32 00
9890	1 "			10 00
1119	1 "			10 00
9861	1 "			9 50
1141	1 "			8 00
1119	1 "			9 50
4850	1 "			13 00
4958	1 "			11 00
8631	2 "		8.50	17 00
2594	1 "			20 00
4841	3 "		19	57 00
9242	3 "		15	45 00
3849	2 "		13	26 00
1197	1 "			12 00
4772	9 "		18	126 00
3557	13 "		13	169 00
6947	4 "		17	68 00
6732	12 "		13	156 00
3586	4 "		14	56 00
3812	1 "			12 00
4748	3 "		18	54 00
4881	3 "		18	54 00
4582	1 "			15 00
7117	11 pants		4	44 00
7070	2 "		6	12 00
				6,859 00

	Am't b't over			6,859 00
7012	2 pants		5.50	11 00
6856	1 "			5 00
7085	1 "			5 00

6730	1 pants			6 00
6857	1 "			6 00
6367	4 "		4.25	17 00
6198	1 "		5.00	5 00
6857	2 "		6.00	12 00
12614	1 "			6 00
7118	1 "			4 00
7012	1 "			5 00
6930	1 "			4 00
6856	1 "			5 00
6730	1 "			6 00
7012	1 "			5 00
7017	2 "		4.00	8 00

205

6730	1 pants			6 00
6663	1 "			5 00
7198	12 Norf. jackets		4	48 00
8277	1 pants			6 25
5123	1 "			4 00
804	12 "		1.10	13 00
803	9 "		1.10	9 90
778	5 "		1.37½	6 87
803	10 "		1.10	11 00
769	3 "		1.37½	3 12
777	5 "		1.37½	6 88
778	1 "		1.37	1 37
769	1 "			1 25
995	8 "		2.06	16 48
996	10 "		2.06	20 60
777	1 "			1 37
1014	22 "		.65	14 30
1308	20 "		.82	16 40
6654	5 "		5.00	25 00
6394	5 "		4.00	20 00
				7,105 79

	Am't b't over			7,105 79
6198	4 pants		5.00	20 00
6624	1 "		4.00	4 00
6314	3 "		3.50	10 50
12562	2 "		4.00	8 00
12529	2 "		3.50	7 00
12692	1 "		3.50	3 50
6163	2 "		1.75	3 50
1211	33 "		.87	28 71
600	1 "			4 75
1331	1 "			5 00
7151	1 "			5 00
9915	1 "			3 85

2437	1	pants		5 50
1420	1	"		4 65
1141	1	"		5 50
5932	1	"		1 50
3235	1	"		4 75
4800	1	"		4 75
8965	1	"		4 65
8319	1	"		3 00
1030	1	"		1 30
8990	1	"		4 85
5374	1	"		4 00
6293	1	"		4 85
1698	1	"		3 00
6776	1	"		4 75
1686	1	"		3 00
1315	1	"		3 00
6281	1	"		3 00
6427	1	"		5 00
3723	1	"		4 87
6362	1	"		3 00

206

3036	1	pants		$1 85
2431	1	"		5 60
7419	1	"		5 05
6383	3	"	4.25	12 75
				7,313 77
		Am't b't over		7,313 77
12692	4	pants	3.50	14 00
12615	5	"	6.00	30 00
268	12	"	1.92	23 04
12397	2	"	4.50	9 00
11639	2	"	4.00	8 00
12624	3	"	4.00	12 00
11629	2	"	4.00	8 00
11562	3	"	4.00	12 00
	1	"		3 00
368	8	"	1.95	15 60
12579	5	"	4.95	24 75
1211	6	"	.87	5 22
1206	4	"	1.10	4 40
1291	1	"		3 85
1439	1	"		1 50
1282	1	"		4 75
	1	"		2 60
6362	1	"		1 50
9083	1	"		4 00
	1	"		2 00
9987	1	"		3 00

1505	1 pants			3 85
6427	1 "			5 00
4935	1 "			3 00
9981	1 "			3 00
9321	1 "			3 00
9916	1 "			3 85
8375	1 "			4 00
9890	1 "			4 63
9278	1 "			4 50
8541	1 "			3 85
	1 "			5 50
9289	1 "			4 63
1765	1 "			4 63
9645	1 "			4 63
	1 "			6 50
				7,569 95
	Am't br. over			7,569 95
6934	1 pants			5 50
9978	1 "			5 90
9978	1 "			4 78
	8 spring overcoats		5.00	40 00
10382	1 pants			4 63
10141	1 "			5 00
	2 spring overc.			7 50
5445	1 pants			4 85
10441	1 "			5 00
9978	1 "			5 50
207				
11079	1 pants			4 60
10141	1 "			4 60
10368	1 "			5 00
	4 rev. overc.		5	20 00
10500	1 "			4 63
	1 overc.			10 00
6430	1 pants			4 80
10175	1 "			4 63
10368	1 "			5 05
6205	1 "			5 00
9978	1 "			4 63
	3 overcoats		10	30 00
9879	1 pants			4 00
10141	1 "			4 00
6205	1			5 00
62476	1			1 00
4750	1 "			2 00
3658	1 "			1 00
62476	2 "			1 00
3598	Coat and vest			1 50

3603	1 pants			1 18
5909	1 "			3 00
2983	1 "			3 15
6362	1 "			2 18
4529	1 "			1 60
5927	3 "		3.03	9 09
				7,791 58
				7,791 58
3799	1 pants			1 75
9981	1 "			3 19
5927	1 "			3 07
	19 W. overcoats		8	152 00
3449	1 pants			1 63
	1 overcoat			10 00
6362	1 pants			2 08
	4 overcoats		8	32 00
3605	1 pants			1 25
5927	1 "			3 00
3717	1 "			2 18
3797	1 "			2 75
2983	1 "			3 15
3123	1 "			1 80
3683	1 "			2 18
2371	1 "			2 75
5927	1 "			3 00
4686	1 "			2 75
3517	1 "			2 85
883	1 "			1 00
208				
6233	1 pants			2 50
	7 overcoats		8	56 00
	19 "		6	114
3603	1 pants			1 50
2983	1 "			2 00
1627	1 "			2 00
3517	1 "			1 50
3449	1 "			1 00
1174	1 "			1 25
9664	1 "			1 50
	1 "			1 00
9424	1 "			3 00
8985	1 "			1 50
3479	1 "			2 00
1174	1 "			1 50
1800	1 "			1 00
				8,219 21

	Am't b't over		8,219 21
6427	1 pants		3 00
6950	1 "		2 50
9664	1 "		1 50
4935	1 "		3 50
2050	1 "		2 50
9022	1 "		2 00
	1 "		1 75
3433	1 "		1 75
9424	1 "		2 50
	1 "		1 75
3449	2 "		2 00
	38 overcoats	3	114 00
	52 childred's suitin-	2.50	1 30
	2 overcoats	7	14 00
	46 children's overc.	2.50	115 00
	1 overcoat		5 00
	2 "	6	12 00
	5 "	6	30 00
	62 jean pants	2	124 00
1045	11 pants & vests	5	55 00
1017	5 "	4	20 00
802	6 "	3	18 00
1016	11 "	4	44 00
	64 jean pants	.90	57 60
	15 pants	2	30 00
	29 single coats	2	58 00
	9 pants & vests	5	45 00
	10 Fr. C. & vests	3	30 00
	2 pants	4	8 00
	9 C. & vest	5	45 00
	15 S. C. & vest	5	75 00
	1 pants	4	4 00
1076	12 " & vests	5	60 00
	9 odd pants	4	36 00
	28 " vests	.75	21 00
	12 pants	1.10	13 20
			9,409 76

209

	To am't br. over		9,409 76
	12 pants	1.10	13 20
	24 "	2	48 00
	12 "	2	24 00
	2 "	5	10 00
	2 "	3.75	7 50
	1 "	4	4 00
	1 "		4 00
	6 "	3.50	21 00
	1 "		3 00
	1 "		3 00

	24 pants		3.50	84 00
	3 "		3.50	10 50
	1 suit			9 00
	4 "		4.50	18 00
	1 "		2.75	2 75
	2 "		5	10 00
	4 "		2.75	11 00
	1 "			5 00
	2 "		2.75	5 50
	2 "		5	5 10
	2 "		2.75	5 50
	2 "		4.50	9 00
	1 "		4.00	4 00
	2 "		4	8 00
	2 "		2.50	5 00
	1 "		3	3 00
	5 "		5	25 00
	34 odd pants		3	112 00
	11 "		2.50	27 50
	11 cash. "		2.50	27 50
	6 coats & vests		8	48 00
	6 "		9	54 00
	2 "		7.50	15 00
645	2 pea jackets		12	24 00
	30 cash. pants		2.25	67 50
	30 "		3	90 00
				10,238 21
				10,238 21
	14 odd coats and vests		5	70 00
	4 " "		3	12 00
	2 " "		4	8 00
	20 child's suits		1.50	30 00
	3 "		1	3 00
	3 " velvet*ine*		4	12 00
	11 boys' suits		4.50	49 50
	13 " "		3	39 00
	2 " vests		.50	1 00
	17 " suits		5	85 00
	3 " "		3	9 00
	15 " "		6	90 00
	7 " "		4	28 00
	10 " "		6	60 00
	10 " "		4	40 00
	10 " "		6	60 00
	2 " "		2.50	5 00
	6 " "		4	24 00
210				
	17 boys' suits		3	51 00
	24 "		3	72 00

	22 boys' suits	2.50		55 00
	67 odd child's knee pants	.60		40 60
	18 boys' suits	1.50		27 00
	25 "	1.50		37 50
	12 "	4		48 00
	11 "	1.50		16 50
	15 "	4		60 00
	7 "	1.50		10 50
	9 "	3.50		31 50
	11 "	2		22 00
	7 "	3.50		24 50
	15 "	1.50		22 50
	25 "	1.50		37 50
	14 "	3.50		49 00
	29 "	1.50		43 50
	16 "	3.50		56 00
				11,567 91
	Am't br. over			11,567 91
	12 boys' suits	1.50		18 00
	25 "	1.50		37 50
	45 boys' k. pants	.75		33 50
	3 suits	20		60 00
	1 "			15 00
	6 "	15		90 00
150	12 underwear	15		180 00
125	12 "	12		144 00
192	8 Fr. Balbr.	16.50		132 00
960	2 "	18		36 00
	2 C. flannel	4.60		9 20
	3 "	4		12 00
155	1 Sc. shirts			15 00
	2 overcoats*	4		8 00
	1 C. flannel			4 00
	1 "			4 00
	3 "	3.50		10 50
	2 "	15		30 00
	1 " U. S.	4		4 00
	1 "			3 50
	1 "			3 50
	2 white cal. und.	15		30 00
	1 undershirts	12		24 00
	1 cal. blue flannel			16 00
	1 white u. sh.			14 00
	1 red u. sh.			10 00
	1 C. f. u. s.			2 00
	3 drawer-	1		13 00
	7 shirts			7 00

* Erased in copy.

105	21 ½ hose	3.50		73 50
21	15 ½ "	3.50		52 50
6	5 ½ "	1.30		6 50
275 / 295	5 ½ "	1		5 00
211				
	4 silk handkerchiefs	.75		3 00
	6 "	1		6 00
				12,680 11
	Am't br. over			12,680 11
	3 silk handkerchiefs	1		3 00
	7 " "	1		7 00
	11 " "	.65		7 15
	11 " "	.75		8 25
	5 " "	.65		3 25
	6 " "	.65		3 90
	3 " "	1		3 00
	2 " "	.75		1 50
	2 " "	1.75		2 50
	2 " "	1		2 00
	3 " "	1		3 00
	4 " "	1.25		5 00
	5 " "	1.25		6 25
	2 " "	.75		1 50
	5 " "	.75		3 75
	6 " "	.75		4 50
	11 " "	.75		8 25
	15 " "	.75		11 25
	8 " "	.75		6 00
	6 " "	.75		4 50
	10 " "	.75		7 50
	8 " "	.75		6 00
	7 " "	.75		5 25
	17 " "	.60		10 20
	12 " "	.60		7 20
	12 " "	.75		9 00
	15 " "	.75		11 25
	3 " "	.20		60
	1 " "	.25		25
	10 " "	.05		50
	6 " "	.15		90
	9 " "	.75		6 75
	24 " "	.06		1 44
	24 " "	.06		1 44
	24 " "	.20		4 80
	3 " "	.75		2 25
				12,850 99

	Am't br. over			12,850 99
	5 silk handkerchiefs	.65		3 25
	24 " "	.05		1 20
	12 " "	.65		7 80
	4 " "	1		4 00
	7 " "	.65		4 55
	6 " "	.15		90
	7 " "	.65		4 55
	3 " "	.65		1 95
	4 " "	.65		2 60
	2 " "	.75		1 50
	12 linen "	.25		3 00
	12 " "	.20		2 40
	4 " "	.25		1 00
	4 " "	.20		80
	2 " "	.07		30
	7 " "	.20		1 40
212				
	12 linen hand.	.25		3 00
	24 "	.10		2 40
	2 "	1.25		2 50
701	2 undershirts	3		6 00
M.	1 "			15 00
4116	1 overshirts			6 00
Side.				
4082	1 "			7 00
287	1 "			12 00
	2 pair- socks			30
	3 "			30
	21 "			50
	12 "	.15		1 80
	10 "	.15		1 50
	4 "	.20		80
	3 "			60
	7 "	.20		1 40
	4 "	.20		80
	4 "	.20		80
	2 "			40
	7 "	.25		1 75
				12,977 04

	Am't br. over			12,977 04
	3 pair- socks	.30		90
	2 "	.20		40
	10 "			2 00
	2 "	.25		50
	12 "	.25		3 00
	1 "	.20		20
	7 "	.20		1 40
	3 "	.40		1 20

1	pair socks	.25		25
5	"	.35		1 75
6	"	.30		1 80
6	"	.40		2 40
5	"	.40		2 00
6	"	.25		1 50
6	"	.25		1 50
4	"	.25		1 00
6	"	"		1 50
6	"	"		1 50
4	"	.50		2 00
4	"	.40		1 60
1	"	.25		25
6	"			1 50
5	"	.30		1 50
2	"	.25		50
2	"	"		50
3	"	.72		75
6	"	"		1 50
6	"	"		1 50
1	"			25
3	"			75
1	"			40
4	"			1 00
213				
4	pair- socks	.25		1 00
6	"	"		1 50
4	"	"		1 00
6	"	"		1 50
				13,020 84
	Am't br. over		13,020	84
1	pair socks			25
3	"	.45		1 35
3	"	.25		75
6	"	.45		1 50
7	"	"		1 75
6	"	"		1 50
6	"			1 50
6	"			1 50
6	"			1 50
6	"			1 50
6	"			1 50
1	"			25
6	"			40
2	"			80
1	"			40
4	"	.75		3 00
5	"			4 55
5	"	.35		1 65

3	pair- socks			1 05
5	"	.45		2 25
1	"			50
6	"	.60		3 60
2	"	.50		1 00
5	"	.50		2 50
2	"			90
2	"	.75		1 50
6	"	.60		3 60
4	"	.65		2 65
6	"	.75		4 50
1	"			50
1	"			50
4	"			80
3	"			1 50
4	"	.75		3 00
4	"	.50		2 00
4	"	.50		2 50
				13,081 34
	Am't br. over			13,081 35
5	pair- socks	.75		3 75
1	"			55
6	"			3 30
6	"			3 30
3	"	.55		1 65
3	"			1 65
4	"			2 20
6	"			3 30
2	"			1 10
4	"	.35		1 40
6	"	.25		1 50
2	"			50
5	"			2 50
1	"			25
6	"			2 70
214				
5	pair- socks	.65		3 25
5	"	"		3 25
6	"	.30		1 80
6	"			1 80
7	"	"		2 10
2	"	.30		60
4	"	.30		1 20
4	"			1 20
5	"			1 50
4	"			1 20
3	"			90
2	"			60
6				1 80

6	pair- socks			1 80
61	"		.30	18 30
38	"		.20	7 60
4	"		.40	1 60
7	"		.20	1 40
10	"		.30	3 00
6	"		.35	2 10
2	"			70
				13,158 69
	Am't br. over			13,158 69
3	pair- socks		.25	75
7	"		.40	2 50
5	"		.45	2 25
5	"		.20	1 00
4	"		.40	1 60
3	"		.25	75
5	"			1 15
4	"			1 00
3	"		.20	60
44	"		.40	17 60
3	"		.45	1 35
4	"		.25	1 00
16	"		.55	8 80
2	"		.30	60
2	"			30
2	"			90
3	"			1 35
12	"		.35	4 10
2	"		.40	80
3	"		"	1 20
7	"		.60	4 20
7	"		.65	4 55
7	"		.35	2 45
29	"		.25	7 25
43	"		"	10 75
7	"		"	1 75
12	"		"	3 00
7	"			3 85
8	"		"	2 00
6	"			1 20
5	"		.20	1 00
5	pair- socks			1 25
6	"			1 50
4	"			80
6	"		.20	1 20
2	"		"	2 50
				13,256 04

	Am't br. over			13,256 04
29	pair- socks	.25		7 25
24	"	"		6 00
10	"	.10		1 00
8	"	.15		1 20
5	"	.10		50
6	"	.10		60
8	"			1 60
4	"			80
2	"			40
1	"			20
7	"			1 40
11	"			1 10
2	"			40
12	"			1 20
2	"			40
11	"			1 10
112	"	.15		16 50
6	"	.45		2 70
8	"	.40		3 20
7	"	.50		3 50
6	"			3 00
6	"	.45		2 70
3	"			1 20
4	"	.70		2 80
6	"	.90		5 40
5	"	"		4 50
3	"	.45		1 35
2	"			1 20
4	"	.60		2 40
3	"	.50		1 50
2	"	.45		90
3	"	.40		1 20
6	"	.20		1 20
3	"	.20		60
1	"	.25		25
3	"	"		75
				13,338 04
				13,338 04
5	pair- socks	.25		1 25
6	"	.25		1 50
6	"	"		1 50
4	"			1 00
3	"	.75		2 25
2	"			20
1	"			20
12	"	.15		1 80
6	"	"		90
2	"	.25		50

	3	pair- socks	.20	60
	4	"	.15	60
216				
	9	pair- socks	.25	2 25
	4	"	.15	60
	13	"	.10	1 30
	12	"	.10	1 20
	1	"	.10	10
	1	"		10
	12	"	.12	1 20
	7	"	.40	2 80
	4	"	.25	1 00
	73	"	.25	18 25
	8	shirts & drawers	1.25	10 00
	29	"	1	29 00
	17	"	1.25	21 25
	5	"	1.50	7 50
	6	"	1	6 00
	2	"	1	2 00
	2	"		2 00
	2	"		2 00
	1	"		1 50
	1	"		1 00
	47	balbriggan	1.25	58 75
	26	"		26 00
	9	"		11 25
	12	"		12 00
				13,569 39
				13,569 39
	2	balbriggan		2 00
	2	"	1.50	3 00
	4	"	3	12 00
	2	"	4	8 00
	2	"		8 00
	4	"		4 00
	6	"	2.50	15 00
	48	shirts & drawers	1.25	60
	29	"		36 25
845	3	doz. socks	1.25	4 25
223	4	"		5 00
464	4	"	4.50	18 00
8	26	shirts & dr.	1.25	32 50
	37	"	.70	21 70
	8	"	"	5 60
	20	"	"	14 00
1800	36	"	1.25	45 00
	3	"		4 25
K.	4	doz. "	22	88 00
	1	" flannel shirts		14 00

2005	4	doz. socks	1.75	7 00
2	2	" "		3 50
494	2½	" "	4.50	11 25
	1	" under sh.		45 00
592	4	" socks	2.25	9 00
538	5	" "		11 25
728	4	" "		9 00
	15	shirts & drawers	1.75	26 90
	5	"	1.25	6 25
	4	"	2	8 00
	3	"	1.25	4 25
217				
	2	shirts & dr.		2 00
	1	"		1 00
	6	"		4 50
	5	"		52 50
	14	"		57 00
	9	to-rist dr.		6 75
	5	"		3 75
	7	"	.75	5 25
	3	"	1.25	4 25
	1	pair dr.		1 00
	4	sc. shirts & dr.		4 00
	4	"		2 40
	11	scarlett dr.		13 75
	44	shirts & dr.		66 00
	15	scar.		22 50
	3	card. jackets		2 25
	4	"		5 00
	6	"		12 00
	4	"		6 00
	2	"		5 00
	6	"		9 00
	3	"		6 00
	3	"		3 00
				14,903 90
		Am't br. over		14,903 90
	3	card. jackets	1.50	4 50
	6	"	2.50	15 00
	6	"	2	12 00
	2	"		4 00
	2	"		3 00
	2	"		4 00
	4	"		5 00
	2	"		2 00
	8	B. shirts	.75	6 00
	68	" & dr.		37 80
	29	L. shirts	.75	21 75
	25	"		18 75

	10	L. shirts		7 50
	10	"		7 50
	48	"	.50	24 00
	178	"	.80	142 40
	90	"	.75	67 50
	19	"		19 00
	70	"		52 50
	1	muffler		1 50
	1	"		1 25
	1	"		2 50
	1	"		2 00
	6	hats	1	6 00
	20	"		11 00
	13	"	.40	5 20
	7	"	.60	4 20
	11	"	.40	4 40
218				
	5	shirts & dr.	1.25	6 25
	6	"	1.50	9 00
	2	"	1.25	2 50
80	31	"	1.25	38 75
	61	"	.40	24 40
				14,190 24
		Am't br. over		14,190 24
650	4½	shirts & dr.	2.25	10 12
231	4	"		9 00
	45	merino shirts	.40	18 00
	6	"	.50	3 00
725	3½	doz. socks	2.25	7 75
661	4	"	2.35	9 50
552	4	"	2.35	9 50
6033	2½	"	3.00	7 50
545	4	"	2.25	9 00
	1½	"	"	1 12
440	4	"	2.60	10 40
438	4	"		10 40
E.	2	"	2.75	5 50
	41	shirts & dr.		14 35
	16	"	.50	8 00
981	3	doz. socks	3.00	9 00
1468	1	"		3 00
	4	shirts & dr.		1 60
1470	8	socks		2 00
445	2⅓	doz. socks	2.25	5 18
1549	22	"	2.00	3 74
445	1	"		2 25
	16	shirts & dr.	.50	8 00
	30	"		12 00

18	10 socks & dr.			1 70
1470	4 "	1.00		1 00
593	5 "			11 25
78	1 "			3 00
306	½ "			1 50
231	½ "			1 50
5895	2 "	1.25		2 50
	29 C. flannel	.40		11 60
1236	1 p. socks			25
	3 shirts & dr.	2		6 00
	80 E. & W. collars	.15		12 00
	12 " "	"		1 80
				14,434 25
	Am't br. over			14,434 25
	76 sakakis	.15		11 40
	34 C. flannel	.40		13 60
26	46 C. *h.* u. s.	.75		34 50
	35 C. flannel	.40		14 00
	10 white s. d.	1.50		15 00
	6 "	.75		4 50
	1 grey			75
	3 derby	1.50		4 50
	6 sh. & dr.			3
	2 "			2 00
	34 "	.75		55 50
	1 "			1 00
	19 "	.75		14 25
219				
	9 scarf t.	.75		6 75
	9 "	.50		4 50
	12 "	.40		4 80
	6 "	.50		3 00
	10 "	.40		4 00
	13 doz. ties	3.00		39 00
	4¾ "	"		14 25
	4 "	4		16 00
				15,488 45
	Am't br. over			15,488 45
	3 doz. ties	.30		90
	22 "	4		10 00
	2 "			80
	4½ "	1.50		6 88
	6½ "	4		24 66
	½ "	2		1 00
	¾ "	2.50		1 87
	20½ "	1		20 33
	8 "	1.50		12 00

2 doz. ties			1 00
23 "		.10	2 30
2½ "			20 83
17 gloves		.50	8 50
9 "		.50	4 50
8 "			4 00
11 "		.35	3 85
2 "		.60	1 20
11 "		"	6 60
6 "		.50	3 00
6 "			3 00
10 "		.60	6 00
9 "		.75	6 75
2 "			1 30
9 "			4 50
89 mitts		.75	66 75
7 gloves		.10	70
13 "		.50	5 50
5 "		.65	3 20
7 "		.75	5 25
12 "		1	12 00
1 "			4 00
2 "			8 00
3 "			1 50
3 "			1 50
3½ "		7	21 66
1 lot jewel			20 00
			15,794 28
			15,794 28
1 lot jewelry			20 00
1 "			5 00
2 doz. cuffs			5 00
6 shirts		.75	4 50
5 "			5 00
2 "			1 00
9 "			4 50
15 "			7 50
12 "		.75	9 00
31 "		1.25	38 75
7 blue shirts			8 75
25 "			31 25
220			
3 blue shirts		2	6 00
9 "			13 25
6 "			12 00
8 2½			20 00
8 "		1.75	14 00
30 "			31 50
16 "		1.75	28 00

6	blue shirts		6 00
7	"	2.50	17 50
3	"	1	3 00
20	"	1.50	30 00
54	"	1.25	67 50
50	"	.50	25 00
44	"		17 60
18	"	.40	3 20
5	"	1.25	6 25
18	"	.75	13 50
23	"		23 00
18	"	1.25	22 50
8	"	.75	6 00
10	"		10 00
5	"	1.25	6 25
6	"	1.50	9 00
8	"		12 00
			16,337 58

	Am't br. over		16,337 58
7	blue shirts	1.25	8 75
7	"	.50	3 50
7	"		8 75
82	W. W. collars	.15	12 30
36	Alconage	.15	9 90
36	E. & W. odds	.10	3 60
27	"		4 05
72	" col.	.15	10 80
113	" "	.10	11 30
80	" "	.15	12 00
77	" "	.50	38 50
6	cuffs		1 80
33	"	.15	4 95
56	"	.20	11 20
95	"	.10	9 50
10	E. & W. collars	.15	1 50
80	pair- socks	.30	2 02
42	"	.60	2 10
29	"	.80	1 94
3	"	.10	30
14	"	.60	70
13	"		9 75
13	"		1 25
7	"		2 10
14	"		1 40
4	"		1 40
4	"		60
			16,513 54

221 Hats.

	Am't brought over			16,513 54
2	C.	3		6 00
3	"			9 00
3	"			9 00
1	"			3 00
2	"			6 00
1	"			1 70
4	"			12 00
27	"			81 00
1	"			2 06
11	"			33 00
1	"			2 70
3	"			9 00
3		2.70		8 10
3				9 00
3		2.70		8 10
3				9 00
2		2.70		5 40
2				6 00
3				9 00
38	"	2.80		109 44
18	"	"		54 84
2	"	3		6 00
18	"			54 00
2	"			6 00
17	"	2.75		46 75
2	"			6 00
53	"	3		159 00
12	"	1.60		19 20
7	"	3		21 00
5	"	2.75		13 75
14	"	3		42 00
1	"			2 00
2	"	2		4 00
6	"	2		12 00
9	"	2.75		24 75
21	"	2		42 00
3	"	2		6 00
				17,378 33
	Am't br. over			17,378 33
4	C.	3		12 00
3	"	2.75		8 25
1	"			3 00
5	"	2.75		13 75
6	"	2		12 00
3	"	2		6 00
5	"			10 00
4	"			8 00

3	C.			6 00
8	"	2.75		22 70
4	"			8 00
7	"	2.75		19 20
3	"			6 00
36	"	2		72 00
32	"	.90		28 90
62	"	2		124 00
18	"	1.10		19 80
2	"	1.60		3 20
1	"	1.10		1 10

222 Hats.

16	C.	1.60		25 60
7	"	1.63		11 41
10	"			16 30
20	"	1.10		22 00
13	"			14 30
2	"	1.60		3 20
11	"	2		22 00
69	"	2.50		172 50
13	"	1.90		24 70
3	"	2.50		7 50
2	"			4 00
3	"	1.60		4 80
3	"			4 80
50	"	1.90		95 00
9	"	2.75		24 75
6	"	2.75		16 50
8	"	2		16 00
				18,047 59

	Am't br. over			18,047 59
23	C.	2		46 00
4	"			12 00
12	"			24 00
3	"	2.75		8 25
3	"	2		6 00
9	"	2.75		24 75
12	"	2.75		33 00
3	"	"		8 25
1	"			3 00
3	"			6 00
5	"			10 00
4	"			8 00
11	"	1.50		16 50
2	"	.93		1 86
3	"	1.60		4 80
3	"	1.50		4 50
6	"			12 00

4	C.		8 00
7	"		14 00
12	"		18 00
7	"	2	14 00
6	"		12 00
12	"	2.50	30 00
1	"		2 00
2	"	1.75	3 50
3	"	1.75	5 25
8	"		16 00
14	"	1.50	21 00
20	"		40 00
20	"		40
3	"	.75	2 25
7	"		5 25
3	"	.25	75
15	"	.25	3 75
4	"	2	8
1	"		75
			18,521 00

223 Hats.

	Am't br. over		18,521 00
11	C.	1.50	16 50
2	"		2 00
24	"		24 00
45	"	2	90 00
12	"	.25	3 00
23	"	1.10	25 30
2	"	.75	1 50
7	"	"	5 25
7	"	.50	3 50
8	"	.75	6 00
3	"	.50	1 50
7	"	.80	5 60
1	"		1 00
2	"	1	2 00
3	"	.25	75
5	"	.75	3 75
2	"	1	2 00
3	"	2	6 00
2	"	"	4 00
1	"		1 00
4	"		8 00
6	"	2	12 00
5	"	2	10 00
24	"	1.75	42 00
3	"		6 00
2	"	2	4 00
2	"		4 00

2	C.			2 00
1	"			1 00
2	"			4 00
3	"		1.75	5 25
2	"		2	4 00
3	"			6 00
1	"			2 00
1	"			1 75
4	"		2	8 00
				18,845 65
		Am't br. over		18,845 65
1	C.			2 00
2	"		1.50	3 00
10	"		1.80	18 50
22	"		2.50	55 00
3	"		1.50	4 50
2	"		2.50	5 00
2	"		2	4 00
3	"		2	6 00
1	"			2 00
1	"			2 00
2	"			4 00
2	"			4 00
3	"		1.50	4 50
1	"			1 75
2	"			4 00
5	"			5 00
6	"			6 00
1	"			75
1	"			2 00
7	"			14 00
2	"		1.50	3 00
224		Hats.		
6	C.			12 00
15	"		2.10	31 50
1	"			2 00
4	"		1.50	6 00
2	"			2 00
2	"			4 00
3	"			3 00
4	"			8 00
2	"			3 00
1	"			1 00
2	"			2 00
7	"			3 50
3	"		.75	2 25
5	"		.50	2 50
2	"			3 00
				19,082 40

	Am't br. over		19,082 40
9	C.	2.50	22 50
2	"	.50	1 00
1	"		2 00
3	"		6 00
2	"		4 00
1	"		2 00
4	"	1	4 00
3	"	.50	1 50
1	"		2 00
3	"	1.00	3 00
12	"	1.50	18 00
23	silk caps	.35	8 05
25	"	.10	2 50
5	"	.15	75
7	scull caps	.15	1 05
6	" "		90
4	" "		60
6	" "	.65	3 90
4	silk "	.35	1 40
3	" "	.50	1 50
1	boy's "		50
41	overalls		24 60
2	doz. "	3	6 00
1	overshirt		6 00
14	linen overalls		10 50
1	"		9 00
34	blowses		6 00
10	lined blowses		7 50
18	sack coats	2	36 00
15	" pants		11 25
8	" coats	2	16 00
1	doz. overalls		6 00
15	sack shirts	.25	3 75
16	" "	"	1 50
11	" vests		11 00
22	" shirts		5 50
			19,329 85

	Am't br. over		19,329 85
2	doz. jumpers	4.50	9 00
225			
9	doz. overshirts	6	54 00
3	" jumpers	4.50	13 50
5	" "	"	22 50
9	" overalls	.50	4 50
28	jumpers	4.50	10 50
17	unlined u. sh.		12 75
2	doz. jack. & vest-	9	18 00
217 3	socks	2.15	6 45

49	1	socks		2 25
230	2	"	2.10	4 20
49	1	"		2 25
G. 5	5	"		10 00
A. B.	5		1.25	6 25
1 6	–	"	.75	4 50
T.W.C	10	"	.10	1 10
A. M.	9		.75	6 75
	2 doz. white ties		.80	1 60
	2 " "		1	2 00
	10 " black "			1 00
	9 " " "			50
	5 mufflers		.50	2 50
	27 bows		.25	6 75
	2 mufflers		.75	1 50
	11 scarfs		.25	2 75
	10 "			2 50
	10 doz. ladies' gloves		1.75	17 50
	19 " Monarch "		1.50	15 00
	1 pair sussp.			4 00
	11 "			2 35
	1 "			3 50
	8 "			2 00
	40 bows			8 00
	59 doz. white ties			3 00
	1 doz. black ties			2 25
	1 " "			2 25
				19,599 30
	Am't br. over			19,599 30
	2 doz. black ties			2 25
	1 " "			2 25
	33 " "			6 50
	4½ " "			11 25
	1 " "			1 25
	2 shirts			3 00
	9 pair socks			1 35
	2 doz. ties		.65	1 30
	8 " "			1 30
	4 " "		.32	32
	8⅕ prem. ties			19 12
	39 oil hats			5 00
	10 doz. cotton u. not.		3.50	35 00
	20 oil coats & p.			10 00
	4 ties			1 00
	2 "			1 00
	4 "			1 00
226				
	7 ties			2 10
	6 "			1 50

5	ties			2 00
5	"			1 50
5	"			2 00
6	"			1 50
5	"			1 00
9	"			2 25
4	"			1 20
4	"			80
2	"			40
8	"			1 60
6	"			1 20
105	diploma			
10	"			7 50
9	"		.75	6 75
4	"		.75	3 00
8	"		"	6 00
6	"			4 50
				19,738 99

	Am't br. over			19,738 99
7	diploma		.75	5 25
8	"			6 00
8	"			6 00
3	"			2 25
7	"			5 25
8	"		.50	4 00
12	"			3 00
6	"			3 00
2	"			1 00
6	"		.25	1 50
11	"		.50	5 50
9	"			4 50
12	"		.75	9 00
3	"			1 50
6	night shirts			3 00
7	"		.75	5 25
3	"			75
10	"			7 50
8	"		.50	4 00
5	"		.35	1 75
9	"			4 50
8	"			4 00
12	"			4 20
10	"			5 00
12	"			6 00
9	"			4 50
6	"			3 00
11	"			2 75
6	"			1 50
6	"			2 10

4	night shirts		1 40
3	"		75
2	"		70
6	"		3 00
3	"		75
6	"		3 00
			19,866 14

227

	Am't forwarded		19,866 14
4	night shirts		2 00
9	"	.35	3 15
4	"	.25	1 00
2	"		1 00
19	"	.50	9 50
3	"	"	1 50
9	"		2 25
7	"		3 50
6	"		3 00
4	"		1 00
5	"		2 50
1	doz. white vests		6 00
$2\frac{1}{2}$	" fl. "	21.00	52 50
$6\frac{10}{12}$	balto. sk. & D.		54 66
$1\frac{10}{12}$	" "		22 00
1	doz. cash. sh.		21 00
1	"		18 00
1	"		14 00
1	"		21 00
1	"		18 00
1	"		8 00
1	"		21 00
1	"		13 50
1	doz. "		18 00
1	"		21 00
1	"		21 00
1	"		10 00
1	"		21 00
1	"		18 00
1	"		18 00
1	"		30 00
$\frac{1}{2}$	cord. jack.	21.00	10 50
$8\frac{5}{6}$	gloves	6	63 00
$3\frac{2}{3}$	"	10	36 66
2	"	9.00	18 00
1	"		30 00
1	"		6 00
			20,477 36

	Am't forwarded		20,477 36
1	doz. mitts		9 00
½	" gen.	9	4 50
2	" straw hats		2 00
1	duster		1 00
1	doz. gloves		9 00
½	ga'm't		3 00
½	doz. gloves		1 50
4	gents'		2 00
6	"		3 00
7	buck		1 75
1	gloves		6 75
5	"		2 00
1	"		4 50
28	G. gloves		7 00
52	lot- gloves		18 20
6	mitts		1 20
6	"		90
2	"	1.50	3 00
15	"	.10	1 50
17	½ hose	.60	10 20
9	½ "		5 40
109	½ "	.85	93 80
228			
12	wool hose	2	24 00
18	"	1.25	22 50
20	"		35 00
10	"	.90	9 00
	Box rubber boots		303 00
9	b. shirts	6.00	54 00
3⅓	underwear	4	15 00
1	cap		5 00
1	"		2 50
1	"		1 75
1	"		3 50
1	"		5 00
1	"		50
1	"		1 50
			21,150 81
	Am't br. over		21,150 81
1	cap		1 50
1	"		50
1	"		50
1	"		4 00
1	"		50
1	"		50
1	"		1 00
1	"		4 00
1	"		50

1	cap			50
1	"			50
1	"			1 00
1	"			1 00
2	"			2 50
1	"			2 50
4	buck. gloves			2 00
8	"			4 00
23	"		.75	17 25
12	"		.75	9 00
2	"		.25	50
12	"		.50	6 00
12	"		.25	3 00
12	"		.75	9 00
8	"		.50	4 00
10	"		.50	5 00
8	"		.75	6 00
3	"		.25	75
6	"		.10	60
12	"			9 00
11	"		.75	8 25
8	"		.50	4 00
8	"		.50	4 00
8	"		.75	6 00
4	"		.50	2 00
9	"		.25	2 25
5	"		.10	50
				21,274 91
	Am't br. over			21,274 91
9	buck. gloves		.75	6 75
10	"		.75	7 50
5	"		.75	3 75
7	"		.50	3 50
5	"		.75	3 75
7	"		"	5 25
229				
12	buck. gloves		.75	9 00
8	"		.50	4 00
8	"			2 00
7	"			3 50
4	"			2 00
3	"			1 50
12	"			4 20
8	"			2 00
7	"			3 50
5	"			2 50
8	"			4 00
8	"			2 00
7	"			3 50

5	buck. gloves			1 25
8	"			2 00
11	"			2 75
6	"			2 40
18	"			6 30
9	"			2 25
2	"			1 00
7	"			3 50
8	"			4 00
12	"			6 00
11	"			5 50
8	"		.75	6 00
7	"		"	5 25
33	"		.25	8 25
10	susp.		2	20 00
37	"			6 29
1	hatter			2 50
				21,432 35
	Am't br. over			21,432 35
1	hat			2 00
1	"			75
2	"			2 50
1	"			1 50
4	"			6 00
1	"			75
2	"			3 00
3	"			3 75
5	"			3 75
1	"			1 50
2	"			4 00
1	"			1 50
4	"		1.25	5 00
1	"			1 50
6	flannel shirts		.75	4 50
10	"		1.50	15 00
10	"		1.00	10 00
12	"			12 00
12	"			6 00
12	"		.50	6 00
6	"		.75	4 50
6	"		.75	4 50
12	"		1.00	12 00
11	"			11 00
12	"		.75	9 00
12	"			6 00
12	"			9 00
17	"			4 25
230				
26	flannel shirts		.83	21 58

18 flannel shirts		.50	9 00
8	"		4 00
19	"	.75	14 25
17	"	.50	8 50
1	"		3 00
1	"		1 50
1	"		4 00
			21,649 43
Am't br. over			21,649 43
2 suit		2.00	4 00
1 "			8 00
1 "			8 00
2 "		7.00	14 00
2 "			16 00
1 "			6 50
10 p'ts		5.00	50 00
13 "		4.00	52 00
4 "			12 00
2 "		2.00	4 00
15 satchels		2.50	37 50
9 "		1.50	15 75
4 "			1 00
22 hats		1.50	33 00
8 "			16 00
8 "			16 00
2 "			4 00
12 "			18 00
22 "		2.75	60 50
26 "		3.00	78 00
4 "		3.15	12 60
7 "			5 50
6 "			18 00
6 "			16 50
21 "			42 00
12 "			36 00
2 "			5 50
2 "			5 50
25 "			68 75
24 "			48 00
9 "			13 50
2 "			5 50
18 "			54 00
6 "			18 00
3 "		2.10	6 30
12 "		1.60	19 20
			22,477 53

Am't br. over			22,477 53
12 hats	2.75		33 00
21 "	2.00		48 00
			22,558 53

231 STATE OF COLORADO, } ss:
County of Lake, }

I, Charles A. Hinckley, a notary public in and for the county in the State aforesaid, the commissioner duly selected by the respective parties hereto to take the testimony of the above and foregoing witness-s, do hereby certify that previous to the examination of the said witnesses in the said cause, wherein Daniel K. Tenney *et al.* are plaintiffs and Sam. Rich *et al.* are defendants, each and all of said witnesses were duly sworn by me to testify the truth in relation to the matters and things in controversy between the said plaintiffs and defendants so far as they should be interrogated concerning the same.

That said depositions were taken at my office, in the city of Leadville, Lake county, Colorado, commencing on the 25th day of October, A. D. 1887, and closing on the 26th day of October, A. D. 1887, and the same were taken by me in stenographic notes and by me extended on the typewriter; that I was attended by W. S. Decker, counsel for the complainants, and A. T. Gunnell, Esq., counsel for the defendants May & Hirsch; that I am not in any way related to either or any of the parties to said cause or an attorney for any or either of said parties; and, further, that the exhibits hereto attached were duly offered in evidence.

Fees:

$41 80, paid by complainants.
93 60, paid by derendants May & Hirsch.

$145 40

[SEAL.] Witness my hand and notarial seal this 31st day of October, A. D. 1887.

(Signed) CHAS. A. HINCKLEY,
Notary Public.

232 (Endorsed:) 2149. Circuit court. Daniel K. Tenney *vs.* Samuel Rich *et al.* Deposition. Opened, published, and filed Dec. 2nd, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 3rd day of December, A. D. 1887, there was filed in said court and in said cause a certain stipulation as to the evidence of Samuel Rich and Jacob Rich; and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Evidence of Samuel Rich and Jacob Rich.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States, Sitting Within and for said District.

DANIEL K. TENNEY *et al.*, Complainant-, }
vs. } No. 2149.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs. } No. 2144.
SAMUEL RICH *et al.*, Defendants. }

233 It is hereby admitted and agreed that Samuel Rich will testify in this cause that the goods, wares, and merchandise mentioned in the complaint herein and purchased of the firms and persons mentioned therein were purchased under the same arrangement with David May and Adolph Hirsch that is testified to by said Rich in his deposition in the case of L. Lowenstein, doing business under the firm name of L. Lowenstein & Co., against David May and Adolph Hirsch, now pending in this court, and it is hereby stipulated that this agreement as to the testimony of said Rich may be read in evidence in the said case as his testimony, and the same as if he had actually testified to the same in this case.

And it is further stipulated that the testimony of Jacob Rich, taken in the said suit of L. Lowenstein & Co. against David May and Adolph Hirsch, may be read in evidence in this case with the same effect as if it had been taken herein.

(Signed) W. S. DECKER,
Solicitor for Complainant.
CHARLES I. THOMPSON,
Solicitor for David May and Adolph Hirsch.

(Indorsed:) U. S. circuit court. D. K. Tenney *vs.* Sam'l Rich. Stipulation as to evidence of Sam'l & Jacob Rich. Filed Dec. 3, 1887. (S'g'd) William A. Willard, clerk.

234 And the evidence of Jacob Rich, heretofore and on, to wit, the 7th day of Oct., A. D. 1887, opened, published, and filed in said court and in a certain cause in said court then pending, wherein L. Lowenstein, doing business under the firm name and style of L. Lowenstein & Co., *were* plaintiffs and David May and Adolph Hirsch were defendants, mentioned in the stipulation filed Dec. 3, A. D. 1887, is in words and figures as follows, to wit:

Evidence of Jacob Rich.

"EXHIBIT A."

In the Circuit Court of the United States in and for the Eighth Judicial District in and for the State of Colorado.

L. LOWENSTEIN, Doing Business under the Firm Name and Style of L. Lowenstein & Co., Plaintiff,
vs.
DAVID MAY & ADOLPH HIRSCH, Defendants.

To the defendants above named:

You will please take notice that in the above-entitled actions the depositions of Jacob Rich and Samuel Rich, on behalf of the plaintiff, to be used on the trial thereof, will be taken before Andrew W. Brazee, commissioner for the United States, at the office of said Brazee, in the city of Denver, in the county of Arapahoe and State of Colorado, on Saturday, the 30th day of April, 1887, be-
235 tween the hours of nine a. m. and six p. m. of that day, and, if not completed on that day, the taking will be continued from day to day, successively thereafter and over Sundays, at the same place until completed.

(Signed) WILLIAM H. NASH,
R. D. THOMPSON,
Attorneys for Plaintiff.

Service of a copy of the above notice is hereby acknowledged this twenty-fifth day of April, 1887.

(Signed) A. HIRSCH,
DAVID MAY,
Defendants.

(Indorsed:) U. S. circuit court. L. Lowenstein *vs.* David May & Adolph Hirsch. Notice of deposition. William H. Nash, R. D. Thompson, attorneys for plaintiff.

"EXHIBIT B."

In the Circuit Court of the United States for the District of Colorado.

L. LOWENSTEIN, Plaintiff,
vs.
DAVID MAY & ADOLPH HIRSCH, Defendants.

W. H. Nash, being first duly sworn, on oath deposes and says that he is one of the attorneys of the plaintiff in the above-entitled action; that on Monday, the 25th day of April, A. D. 1887, the said plaintiff gave notice to the said defendants that on Saturday, the 30th day

of April, 1887, the plaintiff would take the depositions of
236 Jacob Rich and Samuel Rich before Honorable A. W. Brazee, a commissioner of this court, said deposition to be used on the trial of the said cause: that the said Jacob Rich and said Samuel Rich, at the time of the giving of said notice, resided and still resides at a greater distance *distance* than one hundred miles from Denver, which said Denver is the place of the said action, and that the said Samuel Rich is about to go out of the United States.

(Signed) WILLIAM H. NASH.

Subscribed and sworn to before me this 30th day of April, A. D. 1887.

(Signed) ANDREW W. BRAZEE,
(*United States Circuit Court Commissioner for Dist of Colorado.*)

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Be it remembered that on this the 30th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, I, Andrew W. Brazee, a United States circuit court commissioner in and for the district of Colorado, pursuant to the prefixed notice and admission of service thereof, marked A, did call and cause to be and personally appear before me, at the time and place in said notice mentioned, to wit, at the hour of ten o'clock in the forenoon of the 30th day of April, 1887, at my office, 1540 Champa street, in the city of Denver, Colorado, Sam. Rich and Jacob Rich, therein mentioned, to testify and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of controversy, now pending and undetermined in the circuit court of the United States for the
237 district of Colorado, wherein L. Lowenstein, doing business under the firm name and style of L. Lowenstein & Co., is plaintiff, and David May and Adolph Hirsch are defendants.

And then and there came before me also the said plaintiff, by W. H. Nash and R. D. Thompson, his attorneys, and the defendant, by Chas. I. Thompson, his attorney; and the said Sam. Rich, being about the age of forty-one years, and the said Jacob C. Rich, being about the age of forty-six years, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the suit and matter of controversy aforesaid, were then and there examined orally by said attorney, and did then and there and thereupon depose, testify, and say in answer to question and cross-questions, as appears in their respective following depositions—that is to say, in the manner appearing in several depositions of said witnesses hereto annexed.

I further certify that when the hour of adjournment arrived on this day the further proceedings herein, by the consent of the attorneys of the respective parties, were adjourned until the second day of May, 1887, at the hour of two o'clock p. m., when the parties appeared as aforesaid, by their respective attorneys, and the testimony of said Sam. Rich was read to him and corrected in their presence, as appears in his depositions.

* * * * * * *

238 Deposition of JACOB RICH, a witness produced, sworn, and examined on the part and behalf of the plaintiff aforesaid, in the manner aforesaid, upon interrogatories as follows:

Q. State your name, age, occupation, and place of residence.
A. Jacob Rich; 45; tailor; Leadville, Colorado.
Q. Are you acquainted with Samuel Rich?
A. Yes, sir; I am.
Q. What relation do you bear to him?
A. Brother.
Q. Do you know David May and Adolph Hirsch, the defendants in this case?
A. I have known them for a long time.
Q. What business was your brother engaged in in Leadville?
A. Clothing and furnishing goods.
Q. When did he quit business?
A. About the 24th of March he was closed up.
Q. Who closed him up?
A. Well, I happened to be in the store with Lewis Nathan, the clerk, and Mr. Hirsch, David May, Mr. Thompson, and Mr. Gunnell came into the store. Mr. Dave May says, "Lewis, give me the key and you can come over and sleep in my store," and he asked if there was another key and Lewis said, "Yes; in the drawer," and gave it to him. They just remarked that within two or three weeks "Sam. will be back in the store."
Q. Now, state whether you have had any conversation at any time with Adolph Hirsch and David May with reference to your brother's affairs and his business.
A. Well, I met May next morning, and I told him the thing looked to me like the "James boys' hold-ups," because they came in at half past eight and demanded the key and a little after half past ten they signed the papers, and I says I shall not be silent; it is a conspiracy between you and Hirsch and I am interested.
239 Q. What did May say?
A. He said, "Go ahead and do what you please."
Q. Now, have you ever had any conversation with Hirsch about this matter?
—. About the 4th of April I went to his place of business and did not meet him, and after I came out I met him on the corner of 5th and Harrison ave. and I told him, "Mr. Hirsch, you don't seem to carry out your agreement with Sam. and you have made Sam. pen-iless, and, the way this thing has worked, I believe he is robbed and you are robbing the creditors." He says, You can go to hell and be damned and, he says, the Chicago people can get shit.
Q. Now, Mr. Rich, do you know of any goods having been taken from the store of your brother to the store of David May a short time prior to his going East this spring?
A. Yes, sir.
Q. What do you know about that?
A. It was along about 5 o'clock. I generally spent most of my time at the store. I passed by there and I saw Sam. Rich in the

store and I took hold of the door and he opened it. I came in and saw a lot of goods packed up in blankets. I asked him if he had made a sale.

Q. Did Dave May come in?

A. In about an hour and a half he came in with an express wagon and brought half a dozen baskets to put in the small goods. I helped him carry them out through the back way to the sled, and they took two good sled-loads away and into the back end of May's store.

—. Did he explain why he was taking the goods away?

A. He did not say anything. I said to him, "You have a right to buy goods from any one you wish and I do not see why you should not do it in daylight," and he says, "I do not want any one to know the scheme."

Q. Did you have any talk with Dave May or Adolph
240 Hirsch while your brother was East buying goods?

A. The only talk I had with Dave May was one day I asked him where Rudolph was.. He says, "Why; do you want to see him?" and I says, "On business," and he says, "There he comes."

Conversation objected to between Rich and Ney.

Q. Mr. Rich, do you know about the time your brother was going East?

A. Yes, sir.

Q. Do you know with what purpose and intention he went East?

A. It was the intention between David May, Adolph Hirsch, and Sam. Rich that he go and get the goods and then fail.

Q. How do you know that?

A. I know it, as my brother always consulted me what was best to do and I told him to do what was best.

The two last answers objected to by counsel for defendant, who asks that they be stricken out because they are upon knowledge from his brother, Sam. Rich.

Q. Did you, while your brother was East, have any talk with Hirsch or May about your brother and what he was doing?

A. Dave asked me once or twice when he was coming home and that is about all the conversation we had.

Q. Did you have any talks with Dave May or Adolph Hirsch just prior to the time your brother went East, as to your brother's plans?

A. No; I did not.

Q. State if you were in your brother's store while he was East?

A. I went there three times a day.

Q. Who was in charge?

A. There was two clerks, and I went there while they were out to get their meals.

241 Q. Did either of these clerks represent the interests of Mr. Hirsch or Mr. May, if you know?

A. No, sir.

Q. Who took the money?

A. The money was taken by Rudolph Nay, the book-keeper of Adolph Hirsch.

Q. He was there every day?

A. He just came in at nine o'clock every night—just before they shut up—and took the money.

Q. Did he ever talk to you about what he was doing with the money?

A. No; he never said anything to me. The note at the Carbonate bank of $1,500 and balance of $1,100, endorsed by Dave May, and one of the clerks came up to me and showed me a notice of the bank asking that the note be paid in two days, and I knew the money that was taken in every night was to go on that note, and I went to Hirsch's office to ask him, Ney, about it. He was not there, and I went out to look for him. I saw Dave May and asked Dave where he was, and he said, "There he is coming," and I says, "You have taken sufficient money to pay that note," and he says, "I was authorized by Dave May and A. Hirsch not to deposit any more money."

Question objected to, and that part of the answer that relates to the conversation between witness and Rudolph Ney, because it is irrelevant, incompetent, and not responsive to the question.

Q. Who is Rudolph Ney?

A. Book-keeper for Mr. Hirsch.

Q. For whom did he take the money every night?

A. He took it for Sam., my brother. He was to take the money and put it in the bank on that note.

Q. Do you know if he is also authorized by either Mr. Hirsch or Mr. May to take the money?

A. No, sir; I do not think he was. He told me he was authorized by Hirsch and May not to deposit any more of Sam. Rich's money.

242 Counsel for defendant objects to that part of the answer which says "his answer was that he was authorized by Dave May and Hirsch not to deposit any more of the money," because it is incompetent, irrelevant, and not responsive to the question.

Q. Did you hear any conversation on the day of your brother Sam.'s return, that took place between your brother and Dave May, about your brother's affairs?

A. Yes, sir.

Q. Where did this conversation take place?

A. In the store of my brother.

Q. What time was it?

A. About noon.

Q. What was said at that conversation?

A. When I came in Dave was sitting in the chair with his feet on the heater and Sam. was leaning on the heater. I came into the store and saw them in conversation, and I remained there by the table and heard the conversation. Dave May said, "Now, look here, Sam., I think the best thing that we can do is to foreclose the thing

at once." Sam. said, "If you want the money I can telegraph to Leopold, which I have done before; the old man will help me;" and he says, "This thing has stood a little too long," and he said he wanted his money, and the bank is all right as long as I am endorsing for you, and Sam. says, On that $2,500 note you will have to give me a credit of that balance. Dave says, I shall not let that old scoundrel, Leopold, get ahead of me. Then they got up and said, "We will go together to-night at Hirsch's office and see." I went back to my place of business.

Q. Now, state if you know what was said by either Dave May or Hirsch at the time or about the time they were taking possession of the store, when they were on the way up to the office?

A. There was not much said at the time they came in for
243 the key. They only said, This thing will not last very long, and we will put Sam. back again within a week or two.

Q. What was said, if you know, on the corner there by Monheimer's?

A. On the corner by Monheimer's I called my brother back——

Objected to.

Q. Did Hirsch say anything at that time?

A. No. I called my brother back, but they would not let him talk to me; they went up to the office again.

Q. What, if anything, did Dave May say at that time about the Chicago creditors, just after or about the time of closing?

A. He never said anything at that time.

Q. Did he at any time?

A. That was the only time—the time I have given.

Cross-examination by Mr. THOMSON:

Q. Mr. Rich, do you know of your own knowledge, or is it from what your brother told you or from what Hirsch told you, how many goods Dave May got out of that store in January, or what he was to pay for them?

A. I haven't said anything of how much the value was.

Q. I asked you if you knew?

A. No; I do not know.

Q. You don't know what the arrangement was between your brother and May in reference to those goods?

A. Only what I have said; that Dave May told me that on the $2,500 note he would credit those goods that he was taking out.

Q. When was it that you met Hirsch on the street and had this conversation with him that you speak about?

A. On the 4th day of April, on Monday, on the corner of 5th street.

Q. Were you looking for him?

A. Yes, sir.

244 Q. What were you looking for him for?

A. I was looking for him to ask him why they had closed up that store. He said it wasn't my business. I told him it was my

business. I said, You made Sam. penniless, as well as your own sister, and I have got a little in that stock myself.

Q. Now, how did you know that they agreed to keep that store open; did you hear Mr. Hirsch or May say so?

A. Right there that night they said, Now it will be all right, and in two or three weeks we will be in there again.

Q. Did they say they would keep the store open?

A. Yes, sir.

Q. Did you hear them say it?

A. Yes, sir.

Q. When did they say it?

A. They said they would sell the goods to the best advantage that will benefit him.

Q. Who said it?

A. Both together.

Q. Which one was it said it?

A. Dave.

Q. Did he say he would keep the store open—did you hear him say it?

A. Yes, sir; I did.

Q. How did he come to say that; had Sam. Rich said anything to him?

A. Sam. had not opened his mouth.

Q. Did Sam. Rich ask him to keep the store opened?

A. He did not say anything. They said it right in my presence, and Lewis Nathan stood there.

Q. Who was May talking to?

A. May was talking to me and Lewis Nathan *and me* when he demanded the keys.

Q. He was not talking to Sam. Rich?

A. At the time he stood at the head of the heater he did not talk to Sam. Rich.

Q. Were you present at the sale?

A. No, sir; I was not.

Q. When you accosted Hirsch on the street there you were
245 doing it in behalf of Sam. Rich and his wife—you were not speaking on behalf of the creditors?

A. I was speaking on behalf of myself.

Q. Did you ever have any conversation at all, excepting with Mr. Hirsch?

A. No, sir; never spoke to him since. Before I was around to his place and sold him some buckles, and it was during the time while Sam. was East, and the whole conversation was about Sam.'s staying away so long.

Q. When was that?

A. That was during the time Sam. was East.

Q. What month was it in?

A. It was in February.

Q. It was before the 1st day of March?

A. I cannot tell exactly the date; along about the 20th of February.

Q. Was that all he said?
A. That is all.
Q. That was about the 20th of February?
A. Yes, sir.
Q. When did Sam. Rich finally get home?
A. On the 24th of March.
Q. Of last March?
A. Yes, sir.
Q. Were you in and about your brother's store a good deal?
A. Yes, sir.
Q. You know considerable about his business?
A. Yes; he always told me about his business.
Q. Did you ever buy any goods in Sam.'s store?
A. Sometimes. I bought a half a dozen suits and pressed them up and sold them as misfits.
Q. You owed him some then?
A. No; I did not owe him any; whenever I bought I always paid for them.
Q. In cash?
A. Yes, sir.
Q. In money right down?
A. Yes; there was always money coming to me.
Q. When did he start East?
A. About the 13th of February.

246 Redirect examination:

Q. You say Mr. Rich started East the 13th of February and got home the 24th of March?
A. Yes, sir.
Q. Now, wasn't it the 20th of March you had the conversation with Hirsch?
A. No; it was not in March.

(Signed) J. RICH.

Subscribed and sworn to before me this 30th day of April, A. D. 1887.

(Signed) ARDREW W. BRAZEE,
United States Circuit Court Commissioner.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Andrew W. Brazee, a United States circuit court commissioner for said district, do hereby certify that the reasons for taking the foregoing depositions is and the fact is that the testimony of said witnesses and of each of them is necessary and material for the plaintiff in the caption of said depositions named, and that the said witnesses live and did live at the time of the taking said depositions each in the city of Leadville, county of Lake and State of Colorado, the same being at a greater distance than one hundred miles from said city of Denver, where the court at *at* which it is expected said

cause will be tried is appointed to be held, to wit, more than one hundred and twenty-five miles therefrom.

I further certify that on the 30th day of April, 1887, I was attended at my office by W. H. Nash and R. D. Thompson, Esquires,
247 of counsel for the said plaintiff, and by Charles I. Thomson, of counsel for the defendants, in the caption of said depositions mentioned, and the witnesses, Sam. Rich and Jacob Rich, who were of sound mind and lawful age, and who were by me each carefully cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and their several depositions were reduced to writing stenographically in my presence, in the presence of said counsel and at their request, and in the presence of said witnesses, and after the same had been carefully extended and typewritten and after carefully reading the same to the witnesses in the presence of said counsel the witnesses subscribed their several depositions in my presence and in the presence of said counsel and each verified the same by his corporal oath to the truth of the same, administered by me as such commissioner.

I further certify that the corrections of said depositions, as the same appear to be corrected in writing, were made by me at the request of each of said witnesses respectively at the time of reading his deposition to him as aforesaid and before the same was signed and sworn to by him, which corrections are attested by my initials, "A. W. B.," in the margin thereof, and that the proceedings before me in the matter of taking said depositions are correctly stated therein, as they now appear; that I have retained said depositions in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said depositions, with my hand to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said depositions and caption named or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand this 2nd day of May, 1887.

(Signed) ANDREW W. BRAZEE,
United States Circuit Court Commissioner for said District.

(Indorsed:) No. 2130. U. S. circuit court. S. Lowenstein *vs.* Dave May *et al.* Depositions — behalf of plaintiff, of Sam. Rich & Jacob Rich. Opened, published, and filed Oct. 7, 1887. (Signed) William A. Willard, clerk.

248 And afterwards and on the same day, to wit, the 3d day of December, A. D. 1887, there was opened, published, and filed in said court and in said cause the depositions of Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss on behalf of complainants and the said depositions are in words and figures — follows, to wit:

Depositions—Tenney et al., Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY, Complainant, *vs.* SAMUEL RICH *et al.*, Defendants. } No. 2149.

MORRIS LEOPOLD *et al.*, Complainants, *vs.* SAMUEL RICH *et al.*, Defendants. } No. 2144.

It is hereby stipulated that the depositions of Henry Liberman and all and any other witnesses, on behalf of the complainants, and any and all the witnesses desired to be used on behalf of the defendants in either of said causes, may be taken *de bene esse*, at Chicago, in the State of Illinois, before Emma A. Caswell, at her place of business, room 319, at 205 La Salle street, Chicago, on the 26th day of September, A. D. 1887, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel arrives, and to commence within twenty-four hours of said time and from day to day thereafter until concluded.

That either party may at said time take depositions *de*
249 *bene esse* of any witness on behalf of them or either of them at said time and until the taking of depositions under this stipulation is concluded, and any and all notice for the taking of depositions in said cases in Chicago is hereby expressly waived, and the evidence to be taken under this stipulation at said time and place may be used by either of said parties in either of said cases with the same force and effect as though taken under order of court or under notice, as provided by statute.

It is further stipulated that the names of the witnesses whose evidence is to be taken herein need not be given by either party to the other, and that the right to take testimony hereunder shall extend to such persons as the several parties may be advised it is expedient to take the testimony of.

This stipulation is made on behalf of David May and Adolph Hirsch, defendants, and on behalf of all the complainants.

Dated this — day of September, A. D. 1887.

(Signed) W. S. DECKER,
Solicitor for Complainants.

" BISSEL & GUNNELL &
THOMSON & SAYER,
Attorneys for Defendants May & Hirsch.

(Indorsed:) United States circuit court. D. K. Tenney *et al. vs.* Sam. Rich *et al.* Stipulation to take dep. in Chicago.

250 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY, Complainant, }
vs. } No. 2149.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs. } No. 2144.
SAMUEL RICH *et al.*, Defendants. }

STATE OF ILLINOIS, } ss:
County of Cook, Northern District of Illinois, }

Be it remembered that on the 26th day of September, 1887, before me, Emma A. Caswell, a notary public in and for the county of Cook and State of Illinois, and duly commissioned and sworn, at my office in Chicago, in said county and State, and within the northern district of Illinois, between the usual hours of business, were produced and personally came before me Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss, witnesses on behalf of the plaintiffs, to depose in certain civil causes above entitled and now pending in the circuit court of the United States for the district of Colorado.

And the said Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss, witnesses, all of lawful age,
called on the behalf of the plaintiffs in the above-entitled
251 action, and residing at Chicago, in the State of Illinois, more
than one hundred miles from the place where the said causes are to be tried, being each duly cautioned and sworn on their respective corporal oaths to tell the whole truth and being carefully examined, depose and say as follows:

DANIEL K. TENNEY, one of the foregoing named witnesses, being first duly sworn, testified as follows:

My name is Daniel K. Tenney; residence, Chicago; occupation, attorney-at-law. In the latter part of April, 1887, Leopold Brothers & Company, of Chicago, placed in my hands for collection a claim against Sam. Rich and Ed. Nathan upon notes, principal sum of which was $10,925.55, and an account against Sam. Rich, $995.75. At the same time Packer, McDonald & Bliss, of Chicago, placed in my hands for collection a claim against Sam. Rich amounting to $1,770.15, $567.23 of which was upon notes and the balance upon open account. I went to Denver; met Sam. Rich, one of the defendants, who had failed. I asked him to give me such security as he was able to do for these claims. I also saw Ed. Nathan at the same time. They gave me a judgment note, payable to the order of Leopold Brothers and Company, for the amount of the claim against Rich and Nathan. I desired Mr. Rich to give me a judgment note also for the claim of Leopold Brothers & Company on open account

and for that of Packer, McDonald & Bliss. He consented to do so upon condition that I would embrace therein also amount which he claimed to owe Meyer, Engel & Company, Henry Liberman & Company, H. Swisky, Simon Hirsch & Company, Rose Rich and Jacob Rich, the whole amounting to $13,665.90. I consented to his request and took the note of Sam. Rich, payable to my order, as
252 trustee, for the benefit of the several creditors named. This is the note upon which judgment was entered in the circuit court of the United States, district of Colorado, in my name.—(E. A. C., N. P.)

Cross-examination (Judge GUNNEL):

—. You do not know of your own personal knowledge, Mr. Tenney, that he owed these other personal sums outside of those you held for collection?

A. Not to my own knowledge.

Q. You do not know whether he owed Simon Hirsch & Company by way of account or note?

A. Not personally. I do not know anything about it.

(Signed) D. K. TENNEY.

Subscribed and sworn to before me this 27th day of September, 1887.

(Signed) EMMA A. CASWELL,
[NOTARIAL SEAL.] *Notary Public, Cook County, Illinois.*

(E. A. C., N. P.)

Direct examination by D. K. TENNEY:

HENRY LIBERMAN, one of the foregoing named witnesses, being duly sworn, testified as follows:

Q. What is your name?

A. Henry Liberman.

Q. Of what firm are you a member?

A. Of the firm of Henry Liberman & Company.

Q. Doing business where?

A. In Chicago.

253 Q. Are you acquainted with the defendant Sam. Rich?

A. I am.

Q. How long have you known him?

A. 12 years.

Q. State whether on the 25th of last April Sam. Rich was indebted to you; and, if so, in what amount.

A. He was indebted to us in closed accounts by notes of $2,354.51 and open account $539.30.

Q. What is the total amount?

A. $2,893.81.

Q. Are these the notes (handing papers to witness) upon which he was indebted to you?

A. They are.

(I offer these in evidence and ask that copies be made by the notary and annexed as Exhibit- "A 1, 2, 3, 4, 5," to which consent is given by counsel for defendants; also statement of open account against Sam. Rich, marked "Exhibit B.")

Q. For what was this indebtedness contracted?
A. For merchandise sold and delivered to Sam. Rich.
Q. When was the last of it contracted?
A. On the 14th of March, 1887.
Q. Any part of it ever been paid?
A. No, sir.
Q. When did you last see Sam. Rich prior to the 25th of April last?
A. I saw him when I was in Leadville, before he came to Chicago, between January 15th and the end of the month, 1887.—(E. A. C., N. P.)
Q. For what purpose were you in Leadville at that time?
A. Selling goods.
Q. Did you make any inquiries while there concerning the financial responsibility of Mr. Rich?
A. I did.
Q. Of whom?
A. David May.
Q. The defendant in this case?
A. Yes, sir.

254 Q. Well, state what inquiries you made and what was said at that time.

A. I was there in David May's store, talking about business and other things, when he asked me if Sam. Rich owed us any money—the firm of Henry Liberman & Company. I told him he did, and that it was past due, and asked him what he thought of his responsibility, and he told me that he was all right.
Q. Did you say anything to him about selling goods to Sam. Rich?
A. Yes; I told him I sold him a small bill at the time and expected to sell him a bill when he came to Chicago later on, which I did.
Q. Did you ask him anything as to whether you better do so?
A. I asked him, and he said he was going to pull through all right.
Q. This was in January, 1887, between the 15th and the latter part of January?
A. Yes, sir; I was in Colorado in January and got there about that time.—(E. A. C., N. P.)

Cross-examination by Judge GUNNELL:

Q. Subsequently to the conversation with May, did you sell Rich any goods?
A. Yes, sir.
Q. Aside from the order that he gave you at that time?
A. Yes, sir; sold him in Chicago.

Q. When Rich came on here?

A. Yes, sir; when he came on here.

Q. Did you ever have any conversation with May in Chicago with reference to the financial responsibility of Rich?

A. Not that I can remember.

Q. At the conversation you had with him in his store in Leadville did you not tell May that Henry Liberman did not question Rich's credit so far as he was concerned, but would be willing
255 to sell him a thousand or fifteen hundred dollars' worth of goods on credit?

A. No, sir.

Q. Did you not tell him at that time that you would be willing to sell him goods to that extent for the sake of old acquaintance?

A. No, sir.

Q. And that the old accounts which you had against him might stand?

A. No, sir.

Q. Did you not say to May in that conversation that you knew that the statement he made the previous season exceeded his assets?

A. No, sir.—(E. A. C., N. P.)

Q. Did you not advise Rich or tell May that you had advised him at the time he made a statement a season previous not to settle in full, but only pay fifty cents on the dollar?

A. No, sir.

Q. Did you not tell May at that time that in the large transaction you had with Rich you made so much you could afford to lose a little?

A. No, sir.

Q. Give me the date again, if you please, of the conversation you had with him.

A. With David May?

Q. Yes.

A. Some time between the 15th of January and the end of the month.

Q. That was the only time you had a conversation with May?

A. Yes, sir.

Q. That is regarding Sam. Rich; you had no other conversation while you were there regarding Sam. Rich?

A. No, sir; only that one time.

Q. Do you recollect ever having any conversation with him in Chicago regarding Sam. Rich?

A. No, sir.

256 Q. Do you recollect ever having any conversation with him than that related in the direct examination?

A. No, sir; only that one.

Q. Was any one else present beside yourself and May when the conversation took place?

A. No, sir; certainly there were other people in the store, but they didn't hear what we were talking about.—(E. A. C., N. P.)

Q. State whether or not this conversation took place in May's offi-e or in some portion of the store.

A. In some portion of the store.

Q. Not in the office connected with the store?

A. No, sir.

Q. Are you sure that you didn't have a conversation in the office of his store, in which such conversation took place, as I have interrogated about?

A. I am positive that I did not.

Q. Did you know, of your own knowledge, Mr. Liberman, or from the commercial reports the standing commercially of Mr. Rich at the time you sold him these goods?

A. I never had a statement from him and did not know what he was worth.

Q. Did you not know at that time that he was indebted to Leopold Brothers and Company to the extent of about $1,500?

A. I knew that he was indebted to them, but how much I did not know.

Q. Did you know that among the wholesale merchants it was regarded dangerous to trade with a man that Leopold Bros. was carrying to that extent?

A. No, sir.

(Signed) HENRY LIBERMAN.

257 Subscribed and sworn to before me this 27th day of September, 1887.

(Signed) EMMA A. CASWELL,
[SEAL.] *Notary Public.*
(E. A. C., N. P.)

(EXHIBIT "A 1.") E. A. C., N. P.

2.54 *April.*
$344.51
——— 347.05 CHICAGO, *February 25th*, 1887.

April 1st, 1887, after date I promise to pay to the order of Henry Liberman & Company three hundred forty-four and $\frac{51}{100}$ dollars, with interest at 7% per annum, at the office of Henry Liberman & Co., Chicago, value received.

No. —. Due —. (254 Franklin.)

SAM. RICH.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Henry Liberman.

(EXHIBIT "A 2.") E. A. C., N. P.

6.60 *May* 4.
$500.00
——— 506.60 CHICAGO, *February* 25, 1887.

On the first day of May, 1887, after date, I promise to pay to the order of Henry Liberman & Co. five hundred $\frac{00}{100}$ dollars, with in-

terest at 7% per annum, at the office of Henry Liberman & Co., Chicago, value received.

No. —. Due —. 256 Franklin St.

SAM. RICH.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Henry Liberman.

EXHIBIT "A 3." E. A. C., N. P.

9.60 *June* 4.
$500.00
——— 509.60 CHICAGO, *Feb.* 25, 1887.

On the first day of June, 1887, after date, I promise to pay to the order of Henry Liberman & Co. five hundred $\frac{00}{100}$ dollars, with interest at 7% per annum, at the office of Henry Liber-
258 & Co., Chicago, value received.

No. —. Due —. 202 Madison St.

SAM. RICH.

[Stamp:] Nat'l Bank of Illinois. Paid. W. A. Hammond, cash.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Henry Liberman.

(Exhibit "A 3.") E. A. C., N. P.

(EXHIBIT "A 4.") E. A. C., N. P.

12.55 *July* 4.
$500.00
——— 512.50 CHICAGO, *Feb.* 25, 1887.

On the first day of July, 1887, after date, I promise to pay to the order of Henry Liberman & Co. five hundred $\frac{00}{100}$ dollars, with interest at 7% per annum, at the office of Henry Liberman & Co., Chicago, value received. 254 Franklin St.

No. —. Due —. SAM. RICH.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Henry Liberman.

EXHIBIT "A 5." E. A. C., N. P.

15.55 *Aug.* 4.
$500.00
——— 515.00 CHICAGO, *Feb.* 25, 1887.

On the first day of August, 1887, after date, I promise to pay to the order of Henry Liberman & Co. five hundred $\frac{00}{100}$ dollars, with

interest at 7% per annum, at the office of Henry Liberman & Co., Chicago, value received. 254 Franklin St.

No. —. Due —. SAM. RICH.

[Stamp:] Nat'l Bank of Illinois, Chicago, Aug. 4, 1887. Paid.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Henry Liberman.

259 EXHIBIT "B." E. A. C., N. P.

Statement.

CHICAGO, *Sept.* 26, 1887.

Mr. Sam. Rich, Leadville, Colorado, to Henry Liberman & Co., men's furnishing goods, 254 & 256 Franklin St., Dr.

Terms:
10 days less 7 per cent.
30 " " 6 " "
60 " " 5 " "

M'ch 14. To mdse..... 539.30

It was orally stipulated between the counsel for the respective parties that copies of notes and original papers which might be offered in the subsequent depositions and identified by the witnesses should be annexed to the depositions in place of the originals.

Direct examination by D. K. TENNEY:

HENRY LEOPOLD, one of the witnesses heretofore named, being duly sworn, testified as follows:

Q. Of what firm are you a member?
A. Leopold Bros. & Co.
Q. How long has that firm been in existence?
A. It must have been in existence under that style nine years.
Q. Are you acquainted with the defendant Ed. Nathan?
A. Yes, sir.
Q. State whether on the 25th of April last they were indebted to your firm?
A. They were.
Q. In what amount was Rich & Nathan indebted to you at that time?
A. $10,925.55.
Q. For what?
A. For merchandise delivered, for notes.
260 Q. Their indebtedness to you was entirely upon notes?
A. Yes, sir.
Q. Have you those notes?
A. Yes, sir (producing notes).
Q. Is this a statement of the notes?
A. Yes, sir.

(The notes are offered in evidence and the statement and copies of the notes are hereto annexed and marked Exhibit- "C 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15.")

Q. Was the defendant Sam. Rich individually indebted to you at that time?

A. Yes, sir.

Q. In what amount?

A. $995.75.

Q. What was that for?

A. Merchandise sold and delivered to him.

Q. At what time was that indebtedness contracted?

A. Feb. 22nd, 1887, $887.75; Feb. 28th, 882, and March 3rd, $26.—(E. A. C., N. P.)

Q. Has any part of this indebtedness that you have testified to been paid?

A. No, sir; not a cent.

(Statement of account against Sam. Rich is offered in evidence and marked Exhibit "D.")

(Signed) HENRY LEOPOLD.

Subscribed and sworn to before me this 27th day of September, 1887.

(Signed) EMMA A. CASWELL,
[SEAL.] *Notary Public, Cook County, Illinois.*

(E. A. C., N. P.)

260½ (EXHIBIT "C 1.") E. A. C., N. P.

728.37. CHICAGO, *June* 1, 1886.

Ten months after date we promise to pay to the order of Leopold Bros. and Company seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

(EXHIBIT "C 2.") E. A. C., N. P.

$278.37. CHICAGO, *June 1st*, 1886.

Eleven months after date we promise to pay to the order of Leopold Bros. and Company seven hundred and twenty-eight $\frac{37}{100}$ —, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

(EXHIBIT "C 3.") E. A. C., N. P.

$728.27. CHICAGO, *June 1st*, 1886.

Twelve months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{27}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

(EXHIBIT "C 4.") E. A. C., N. P.

$728.37. CHICAGO, *June 1st*, 1886.

Thirteen months after date we promise to pay to the order of Leopold Bros. and Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

(EXHIBIT "C 5.") E. A. C., N. P.

261 $728.37. CHICAGO, *June* 1, 1886.

Fourteen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) (S'g.) Nat. Nathan.

(EXHIBIT "C 6.") E. A. C., N. P.

$728.37. CHICAGO, *June 1st*, 1886.

Fifteen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at

Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.
No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 7." E. A. C., N. P.

$728.37. CHICAGO, *June* 1*st*, 1886.

Sixteen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight and $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, interest at 8 *% per cent.* per year, from date.
No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 8." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Seventeen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 % per year, from date.
No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

(EXHIBIT) "C 9." E. A. C., N. P.

$728.37. CHICAGO, *June* 1*st*, 1886.

262 Eighteen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred & twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 per cent. per year, from date.
No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 10." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Nineteen months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred & twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, with interest, at 8 per cent. per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 11." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Twenty months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colo., value received, and interest, at 8 per cent. per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 12." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Twenty-one months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred and twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colo., value received, and interest, at 8 per cent per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

Indorsed: Nat. Nathan.

263 EXHIBIT "C 13." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Twenty-two months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred & twenty-eight $\frac{37}{100}$ dollars, at

Carbonate bank, Leadville, Colo., value received, and interest, at 8 per cent. per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

EXHIBIT "C 14." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Twenty-three months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred & twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colo., value received, and interest, at 8 per cent. per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

Indorsed: Nat. Nathan.

EXHIBIT "C 15." E. A. C., N. P.

$728.37. CHICAGO, *June* 1, 1886.

Twenty-four months after date we promise to pay to the order of Leopold Bros. & Co. seven hundred & twenty-eight $\frac{37}{100}$ dollars, at Carbonate bank, Leadville, Colorado, value received, and interest, at 8 per cent. per year, from date.

No. —. Due —.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

(Indorsed:) Nat. Nathan.

Statement.

CHICAGO, ——, 188–.

Mr. Sam. Rich & Ed. Nathan, Leadville, Col., to Leopold Bros. & Co., cor. Franklin & Quincy Sts., Dr.

Notes to mdse. as per bill rendered.

June 1, '86,	10	months,	'87, due	Apr. 1, '87	728 37
"	11	"	"	May 1,	728 37
"	12	"	"	June 1,	728 37
"	13	"	"	July 1,	728 37
"	14	"	"	Aug. 1,	728 37
"	15	"	"	Sept. 1,	728 37

264	June 1, '86,	16	months,	'87,	due Oct. 1	728 37
	"	17	"		" Nov. 1	728 37
	June 1, '86,	18	months,	'87,	due Dec. 1,	728 37
	"	19	"	"	Jan. 1, '88	728 37
	"	20	"	"	Feb. 1,	728 37
	"	21	"	"	M'ch 1,	728 37
	"	22	"	"	Apr. 1,	728 37
	"	23	"	"	May 1,	728 37
	"	24	"	"	June 1,	728 37
						10,925 55

(Statement giving description of notes marked Exhibit- C 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 :)

Statement.

CHICAGO, ——, 188–.

Mr. Sam. Rich, Leadville, Col., to Leopold Bros. & Co., Franklin & Quincy streets, Dr.

To mdse. as per bill rendered.

Feb. 22, '87	887 75
28,	82 00
M'ch 3,	26 00
	995 75

(Exhibit "D." E. A. C., N. P.)

Please favor us with settlement of the above account.

L. BROS. & CO.

265 Redirect examination by D. K. TENNEY:

NATHAN MEYER, one of the foregoing named witnesses, being duly sworn, testified as follows:

Q. What is your name?
A. Nathan Meyer.
Q. Of what firm are you a member?
A. Meyer, Engel & Company.
Q. Are you acquainted with the defendants Sam. Rich & Ed. Nathan?
A. Yes, sir.
Q. State whether those men were indebted to you on the 25th of April last.
A. Yes, sir.
Q. In what amount?
A. The amount of the statement here, $1,514.75, besides interest.
Q. Upon what was that indebtedness existing?
A. Merchandise sold and delivered.

Q. Represented by notes?
A. Yes, sir.
Q. Have you the notes?
A. Yes, sir.
Q. Are these the notes (handing papers to witness)?
A. Those are the notes.

(The notes are offered in evidence, and ask that copies be made by the notary and annexed as Exhibit- E "1, 2, 3, 4.")

Q. Was the defendant Sam. Rich at that time indebted to you individually in any further amount?
A. Yes, sir.
Q. In what amount was he indebted to you?
A. $2,837.60.
Q. Was that represented by open account?
A. Open account; yes, sir.
Q. For what?
A. For merchandise sold and delivered.
Q. Has any portion of either of these debts been paid?
A. No, sir; nothing.—E. A. C., N. P.

266 Q. When did these accounts originate?
A. $757.90 is a balance due from 1886 account and $2,079.70 was bought Feb. 24th and 26th, 1887.

(Statement of account against Sam. Rich is offered in evidence and is hereto attached, marked Exhibit "*f*.")

(Signed) NATHAN MAYER.

Subscribed and sworn to before me this 27th day of September, 1887.

(Signed) EMMA A. CASWELL,
[SEAL.] *Notary Public, Cook County, Illinois.*

E. A. C., N. P.

(EXHIBIT "E 1.") E. A. C., N. P.

Form No. 64.

$22.68
375.00
——— 397.68

CHICAGO, *June* 1, 1886.

Twelve months after date we promise to pay to the order of Mayer, Engel & Co. three hundred and seventy-five dollars, at the Carbonate bank, Leadville, Colorado, value received, with interest at the rate of 6 % per annum and exchange.

Due June 1–4, 1887.

SAM. RICH.
ED. NATHAN.

Chicago Legal News Co. print.

Stamp: The Carbonate Bank, Leadville, Colorado. No. 23891.

[Written across the face in red ink:] Copy. Protested for non-payment. Leadville, Colo., June 4, '87. Charles C. Hendrie, notary public. Copy.

(Indorsed:) For value received I hereby guarantee the payment of the within at maturity. (Signed) Nat. Nathan. Mayer, Engel & Co. pay Ger. Nat. b'nk, Denver, Colo., or order, for collection accounts Merchants' National Bank of Chicago. John C. Neely, cashier, per Hardy. Union Nat'l bank. Coll. No. 88674, Denver, Colo.

267

(EXHIBIT "E 2.") E. A. C., N. P.

Form No. 64.

$24.55
375.00
——— 399.55 CHICAGO, *June* 1, 1886.

Thirteen months after date we promise to pay to the order of Engel, Mayer & Co. three hundred and seventy-five dollars, at the Carbonate bank, Leadville, Colo., value received, with interest at the rate of 6% per annum & exchange.

Due July 1–4, 1887.

SAM. RICH.
ED. NATHAN.

Stamp: The Carbonate bank, Leadville, Colo. No. 24455.

[Written across the face in red ink:] Copy. Protested for non-payment. Leadville, Colo., July 2, '87. Charles C. Hendrie, notary public. Copy.

(Indorsed:) J. C. Mitchell, cashier, or order, for collection account of German Nat'l bank, Denver, Colorado. J. A. Cooper, cashier. For value received I hereby guarantee the paymnet of the within at maturity. (Signed) Nat. Nathan. Mayer, Engel & Co. pay German Nat'l bank, Denver, Colo., or order, for collection account of Merchants' Nat'l Bank of Chicago. John C. Neely, cashier, per Hardy. Union Nat'l bank. Col. No. 89564. Denver, Colo.

(EXHIBIT "E 3.") E. A. C., N. P.

Form No. 64.

$375.00. CHICAGO, *June* 1, 1886.

Fifteen months after date we promise to pay to the order of Mayer, Engel & Co. three hundred and seventy-five dollars, at the Carbonate bank, Leadville, Colo., value received, with interest at the rate of 6% per annum & exchange.

Due Sept. 1–4, 1887.

SAM. RICH.
ED. NATHAN.

Stamp: Carbonate Nat'l bank, Leadville, Colo. No. 25739.

[Written across the face in red ink:] Copy. Protested for non-payment. Leadville, Colo., 9, 3, '87. Charles C. Hendrie, notary public. Copy.

Indorsed: For value received hereby guarantee the payment of the within at maturity. (Signed) Nat. Nathan. For collection. Pay to the order of cashier of Carbonate bank for account Mayer, Engel & Co.

268 (EXHIBIT "E 4.") E. A. C., N. P.

Form No. 64.

$375.00. CHICAGO, *June* 1, 1889.

Sixteen months after date we promise to pay to the order of Mayer, Engel & Co. three hundred and seventy-five dollars, at the Carbonate bank, Leadville, Colo., value received, and interest at the rate of 6 % per annum and exchange.

Due Oct. 1–4, 1887.

SAM. RICH.
ED. NATHAN.

[Written across the face in red ink:] Copy. Copy.

Indorsed: For value received I hereby guarantee the payment of the within at maturity. Nat. Nathan.

EXHIBIT "F." E. A. C., N. P.

Folio —.

N. Mayer. B. Engel. I. Livingston.

Mr. Sam. Rich, Leadville, Colorado, in account with Mayer, Engel & Co., manufacturers of boys', youths', & children's clothing, corner 5th Ave. & Adams St.

CHICAGO, —— —, 188–.

1886.				
Aug. 18.	To mdse.		1,542 65	
	CR.			
Oct. 15.	By mdse.	34 75		
Feb. 18.	" cash	750 00		
			784 75	
	To bal.			757 90
1887.				
Feb. 24.	To mdse.		2,072 45	
26.	"		7 25	
				2,079 70
				2,837 60

269 Direct examination by D. K. TENNEY:

HENRY W. BLISS, one of the foregoing named witnesses, being duly sworn, testified as follows:

Q. What is your full name?
A. Henry W. Bliss.
Q. Of what firm are you a member?
A. Packer, McDonald & Bliss.
Q. Are you acquainted with the defendants Sam. Rich & Ed. Nathan?
A. Yes, sir.
Q. State whether those men were indebted to your firm on the 25th of April last.
A. They were.
Q. In what sum?
A. In the sum of $567.23 of principal.
Q. Upon these two notes (handing paper to witness)?
A. Upon those two notes.

(These are offered in evidence and I ask that copies be made of them and annexed as Exhibit- "G 1, 2.")

Q. Was Mr. Sam. Rich at that time indebted to you in any additional sum?
A. Yes sir; in the sum of $1,202.92.
Q. Upon open account?
A. Upon open account.
Q. For what?
A. Merchandise sold and delivered.
Q. When did that account originate?
A. That account originated in March, 1887.
Q. What time in March?
A. $71, March 1st; $1,092.92, March 9th; and $39 March 11th.

(Statement of account against Sam. Rich is offered in evidence and attached hereto, marked Exhibit "H.")

(Signed) HENRY W. BLISS.
E. A. C., *N. P.*

Subscribed and sworn to before me this 27 day of September, 1887.

(Signed) EMMA A. CASWELL,
[SEAL.] *Notary Public.*

270 (EXHIBIT "G 1.") E. A. C., N. P.

Form No. 64.

$283.62. CHICAGO, *June* 9, 1886.

Twelve months after date we promise to pay to the order of Packer, McDonald & Bliss the sum of two hundred & eighty-three $\frac{62}{100}$ dollars, at the Carbonate Bank of Leadville, Colorado, with interest at

6% per annum until paid, value received, and Chicago, Illinois, exchange.

Due June 12, 1887.

SAM. RICH.
ED. NATHAN.

EXHIBIT "G 2." E. A. C., N. P.

Form No. 64.

$283.61. CHICAGO, *June* 9, 1886.

Fifteen months after date we promise to pay to the order of Packer, McDonald & Bliss two hundred and eighty-three $\frac{61}{100}$ dollars, at the Carbonate Bank of Leadville, Colorado, with interest at 6% per annum until paid, value received, and Chicago, Illinois, exchange.

Due Sept. 12, 1887.

SAM. RICH.
ED. NATHAN.

EXHIBIT "H." E. A. C., N. P.

Statement.

Mr. S. Rich, Leadville, Colo., to Packer, McDonald & Bliss, 149 & 151 Market street, Dr.

CHICAGO, *Sept.* 26, 1887.

M'ch 1.	F. goods	71 00
" 9		1,092 92
11		39 00
		1,202 92

It is admitted by the parties that on the 25th April, 1887, the defendant Sam. Rich was also indebted to H. Swisky & Company, of Chicago, on open account, for goods sold and delivered, in
271 the sum of $650, which indebtedness accrued in the fore part of March, 1887.

(Memorandum of said account is hereto annexed and marked Exhibit "I.")

EXHIBIT "I." E. A. C., N. P.

No discount allowed unless bills are paid when due. All claims to be made within five days after receipt of goods.

CHICAGO, *Feb.* 7, 1886.

Mr. Sam. Rich bought of H. Swisky & Co., manufacturers of jean and cassimere pants and vests, 251 East Monroe St., cor. Market.

Terms ——.
Sold by ——.
Shipped ——.

1076	12	p. & v.	5.00	60 00
1045	12	"	5.00	60 00
1016	6	"	4.00	24 00
1017	6	"	4.00	24 00
1019	6	"	4.00	24 00
790	12	"	4.00	48 00
1104	12	"	4.00	48 00
1001	12	"	5.00	60 00
802	21	"	2.00	42 00
790	9	vest-	1.00	9 00
1104	9	"	1.00	9 00
807	6	"	1.00	9 00
				414 00

On behalf of the defendants May & Hirsch there is offered in evidence, by consent, the annexed copies of certain statements made by the defendant Rich of the day of the dates thereof, and it is agreed between counsel that said copies are true and correct copies, and that said statements were made and signed by said Rich on said dates.

271½ (Copy.)

CHICAGO, ILL., *Feb.* 18, 1887.

I, Samuel Rich, of Leadville, county of Lake, State of Colorado, for the purpose of obtaining a credit with Sweet, Dempster & Co., of Chicago, Ill., for goods which I may now or hereafter purchase of them, do make the following statement and representations of the present true financial circumstances, wealth, and mercantile respectability of myself:

Assets.	Amount.	Liabilities.	Amount.
Stock of goods on hand at value.	35,000 00	Incumbrances on real estate	None.
Accounts good	750 00	" on personal property.	"
" doubtful		For merchandise and when due:	
" worthless		Leopold Bros., Chi.	6,000 00
Household furniture	1,000 00	Mayer, Engel & Co., Chi.	2,000 00
Cash on hand or in bank	None.	Packer, McDonald & Bliss, Chi.	570 00
Other personal prop.	None.		8,570 00
200 per mo. for rent of store.		Judgments	None.
Insurance on stock, 22,000.00.		For borrowed money—note of Nathan Bros. to Carbonate bank, Leadville, Colo., due either in May or June, 1887.	6,200 00
Real estate in the name of Jules Rich, my deceased wife, at market value, $1,500 00, in which I have ½ interest as her late husband.	750 00	For confidential and all other liabilities.	None.
References.		Amount of debts past due: Nothing except what is due on old settlement to Leopold Bros., Mayer, Engel & Co., & Packer, McDonald & Bliss.	

(Signature) SAM. RICH.

272 (Copy.)

Copartnership Statement.

CHICAGO, *Feb.* 21, 1887.

I, Samuel Rich, a member of the firm of Sam. Rich, of Leadville, county of Lake, State of Colorado, for the purpose of obtaining a credit with Cahn, Wampold & Co., of Chicago, Ill., for goods which we, the aforesaid firm, may now or hereafter purchase of them, do make the following statement and representations of the present true financial circumstances, wealth, and mercantile respectability of the said firm of —— ——, a copartnership composed of —— —— and —— ——:

Assets.	Amount.	Liabilities.	Amount.
(A.) Amount of merchandise on hand, cash value.	27,000 00	1. Encumbrance on real estate. G. To am't of. H. To am't of. I. To am't of.	
(B.) Amount of notes and accounts which are good.	700 00	2. What is the nature of incumbrance?	
(C.) Amount of notes and accounts which are doubtful.		3. When due?	
(D.) Cash on hand or in bank.		4. To whom due?	
(E.) Other personal property to the value of.		5. Encumbrances on personal property.	
F. Insurance on stock of merchandise.	22,000 00	6. Nature of same.	
Real estate. On store building		7. Amount of same.	
(G.) In firm name at cash value.		8. When due.	
(H.) In my name at cash value.		9. To whom due.	
(I.) In name of at cash value.		10. Owe for merchandise?	
J. Is store building occupied in part as a residence?		11. Owe for borrowed money?	
(K.) How long in business under present style?		12. Amount of debts past due.	
(L.) Have you ever failed in business or compromised your indebtedness?		13. For confidential and all other liabilities.	
(M.) In what companies are you insured and what amount in each?		14. Any suits now pending in which your firm or either of you are defendants?	

Leopold Bros., liabilities of	Nathan & Co.		$6,000 00
Mayer, E. & C.	" "		2,200 00
Carbonate bank,	" "		6,200 00
Henry Liberman,	" Sam. Rich		900 00
Mayer, E. & Co.	" "		600 00
			$15,900 00

(Signed) SAM. RICH.

(Individual signature of party making statement only.)

273 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY, Complainant, }
vs. } No. 2149.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs. } No. 2144.
SAMUEL RICH *et al.*, Defendants. }

STATE OF ILLINOIS, } ss:
County of Cook, Northern District of Illinois, }

I hereby certify that on the 26th day of September, 1887, before me, Emma A. Caswell, a notary public in and for the county of Cook and State of Illinois, at my office, room 319, at No. 205 La Salle street, in the city of Chicago, in the county and State aforesaid, personally appeared, pursuant to the stipulation hereto annexed, at the hour of ten o'clock a. m., Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss, witnesses produced by the plaintiffs in the above-entitled actions, and Tenney, Bashford & Tenney appeared *for* counsel for said plaintiffs and A. T. Gunnell appeared as counsel for said defendants, and the said Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss, being each by me first severally and respectively duly cautioned and sworn to testify the whole truth and being carefully examined, did each depose and say as appears by their respective depositions hereto annexed.

274 I further certify that said depositions were then and there reduced to writing by me and were, after they had been reduced to writing, subscribed by said witnesses respectively, and the same have been retained by me for the purpose of sealing and directing the same to the clerk of the court, as required by law.

I further certify that said depositions were taken *de bene esse* by virtue of and pursuant to the stipulation of counsel hereto annexed, and that the reason why said depositions were taken was that the said witnesses reside at Chicago, more than one hundred miles distant from the district of Colorado, the place where these causes are to be tried.

I further certify that I am not of counsel or attorney for either of the parties nor am I interested in the event of said causes or either of them.

I further certify that the stipulation of counsel relative to the account and claim of H. Swisky & Company against Samuel Rich and the stipulation of counsel for the respective parties and the consent of counsel for the defendants relative to the annexing to said depositions and the admission in evidence of copies of certain notes, statements, and other papers was entered into orally by said counsel — was by me at their direction reduced to writing in the words and figures therein set forth.

I further certify that the exhibits attached to the foregoing several depositions and marked "Copy" have been each compared by me with the originals, and that the same are true copies of the said originals and of the whole thereof.

I further certify that the fee for taking said depositions, $18.00, has been paid to me by the said plaintiffs and the same is just and reasonable.

275 In testimony whereof I have hereunto set my hand and seal notarial this 27th day of September, 1887, at the city [SEAL.] of Chicago, in the county of Cook and State of Illinois.

(Signed) EMMA A. CASWELL,
Notary Public.

(Indorsed:) 2149. United States of America, district of Colorado, *ss:* In the circuit court of the United States in and for said district. Daniel K. Tenney, complainant, *vs.* Samuel Rich *et al.*, defendants. No. 2149. Morris Leopold *et al.*, complainants, *vs.* Samuel Rich *et al.*, defendants. No. 2144. State of Illinois, county of Cook, *ss:* Northern district of Illinois. Depositions of Daniel K. Tenney, Henry Liberman, Henry Leopold, Nathan Meyer, and Henry W. Bliss, for complainants. Emma A. Caswell, notary public, Cook Co., Illinois. Opened, published, and filed Dec. 3, 1887. William A. Willard, clerk.

276 And afterwards and on, to wit, the 5th day of December, A. D. 1887, there was filed in said court and in said cause a certain stipulation as to testimony of Samuel Rich, and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Testimony of Samuel Rich.

STATE OF COLORADO, } *ss:*
County of Arapahoe, }

In the United States Circuit Court for the District of Colorado.

DANIEL K. TENNEY
vs.
SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH.

It is hereby stipulated and agreed by and between the parties of this suit that Samuel Rich, on, to wit, the 2nd day of December, A. D. 1887, testified in the suit of L. Lowenstein *vs.* David May and Adolph Hirsch in said circuit court—

1. That neither Ed. Nathan or Nat. Nathan were owing the said Samuel Rich any sum of money at any time during the year 1886 or since then, and that he also testified that he never represented to either David May or Adolph Hirsch that the said Nathans or either of them were owing the said Rich ten thousand dollars ($10,000) or any other sum.

277 Said Rich also testified that he never represented to either said May or Hirsch that the said Nathans or either of them

would pay him $10,000 or any other sum as soon as cattle or stock could be sold, and the said Rich also testified that he never had any conversation at any time with either said May or Hirsch about or concerning indebtedness of either of the Nathans to Rich or the payment of any sum of money by either of the Nathans to the said Rich.

2. The said Rich also testified that there was no invoice made on the "9th" or "10th" day of January or at any other time, to his knowledge, of the goods taken at that time from the store of said Rich to the store of said May in Leadville.

3. The said Rich also testified that he did not in August or October, A. D. 1886, or at any other time represent to the said Adolph Hirsch that his, the said Rich's, indebtedness was twelve thousand dollars ($12,000) and the value of the goods and stock was thirty thousand dollars ($30,000), and that there was never conversation of that character and —.

And it is further stipulated and agreed that if the said Rich was introduced as a witness in this suit he would testify as above; and it is agreed that the above statement of the testimony given by the said Samuel Rich in the said Lowenstein's case may be read in evidence in this suit with the same effect as if the said Rich had been examined and testified as above stated.

(Signed) W. S. DECKER,
Solicitor for Complainant.
CHAS. I. THOMSON, *For Def't.*

(Endorsed:) 2149. United States circuit court. Daniel K. Tenney *vs.* Sam. Rich *et al.* Stipulation as to evidence of Sam. Rich. Filed Dec. 5, 1887. William A. Willard, clerk. W. S. Decker, for compl't.

278 And afterwards and on the same day, to wit, the 5th day of December, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion for Leave to Take Further Testimony Denied.

DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. In Chancery. Creditors' Bill for Relief.

At this day comes the said complainant, by W. S. Decker, Esq., his solicitor, and the said defendants Samuel Rich & David May, by T. D. W. Yonley, Esq., their solicitor, also come.

And the motion of the said defendants to take further testimony herein, coming on now to be heard, is submitted to the court, and, the court being now sufficiently advised in the premises, it is ordered by the court for good and sufficient reasons to the court appearing that the said motion be denied.

And afterwards and on, to wit, the 17th day of December, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Hearing Continued.

279 DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. In Chancery. Creditors' Bill for Relief.

At this day comes the said complainant, by W. S. Decker, Esq., his solicitor, and the said defendants, by C. I. Thomson, Esq., their attorney, also come.

And, this cause coming on now for final hearing upon the bill of complaint, answer, replication, and the testimony taken herein, the hearing of the testimony is continued to the hour of adjournment.

Order: Hearing Taken under Advisement.

And afterwards and on, to wit, the 6th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceedings were had and entered of record in said court and in said cause, to wit:

DANIEL K. TENNEY *vs.* SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH. } 2149. In Chancery. Creditors' Bill for Relief.

280 At this day comes the said complainant, by W. S. Decker, Esq., his solicitor, and the said defendants, by T. D. W. Yonley, Esq., their solicitor, also come.

And this cause coming on now for final hearing upon the bill of complaint, the answer of the said defendants David May and Adolph Hirsch, the replication of the said complainant thereto, and the testimony taken herein, *and* the court, having heard the same and the arguments of counsel, doth take the same under advisement.

And afterwards and on, to wit, the 21st day of March, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

And afterwards and on, to wit, the 17th day of December, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Hearing Continued.

279 DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. In Chancery. Creditors' Bill for Relief.

At this day comes the said complainant, by W. S. Decker, Esq., his solicitor, and the said defendants, by C. I. Thomson, Esq., their attorney, also come.

And, this cause coming on now for final hearing upon the bill of complaint, answer, replication, and the testimony taken herein, the hearing of the testimony is continued to the hour of adjournment.

Order: Hearing Taken under Advisement.

And afterwards and on, to wit, the 6th day of January, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceedings were had and entered of record in said court and in said cause, to wit:

DANIEL K. TENNEY *vs.* SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH. } 2149. In Chancery. Creditors' Bill for Relief.

280 At this day comes the said complainant, by W. S. Decker, Esq., his solicitor, and the said defendants, by T. D. W. Yonley, Esq., their solicitor, also come.

And this cause coming on now for final hearing upon the bill of complaint, the answer of the said defendants David May and Adolph Hirsch, the replication of the said complainant thereto, and the testimony taken herein, *and* the court, having heard the same and the arguments of counsel, doth take the same under advisement.

And afterwards and on, to wit, the 21st day of March, A. D. 1888, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Referred to Master.

DANIEL K. TENNEY *vs.* SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH.	2149. In Chancery. Creditors' Bill for Relief.

This cause coming on to be heard upon the bill of complaint herein, the answer thereto, and the replication of complainants to such answer, and the proofs taken in such action, and having been argued by counsel for the respective parties, and the court having duly considered the same—

It is ordered that the parties complainant or either of them may have thirty days from March 23rd, 1888, in which time to take further testimony before the master of this court or any notary
281 public on the question as to whether the chattel mortgage mentioned in the complainant's bill covered all or substantially all of the property of Rich at the time of the execution of said mortgage, and that the parties defendant shall have thirty days thereafter in which to take testimony before the same master or any notary public on the same question, and the complainants fifteen days thereafter in which to take testimony in rebuttal of that taken by the defendants, each party to give the other five days' notice of the time and place of taking any such testimony; that upon the completion of the taking of any such testimony the same shall be forthwith reported to this court; that if no testimony be taken under and by virtue of said permission, then after the time herein limited for the taking thereof or at an earlier date, if the parties hereto shall agree thereto, then that John W. Webster, master of this court, is ordered to proceed to ascertain the several demands of the complainants, the demands of the said May & Hirsch, and also the demands of any other creditors who may seek to become parties to this proceeding, also to make an estimate of the value of the property conveyed by the said chattel mortgage and to report the same with all convenient speed, and that the said master or any party be at liberty to apply to this court at any time for further directions.

282 And afterwards and on, to wit, the 23d day of March, A. D. 1888, there was filed in said court and in said cause a certain stipulation as to evidence, and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Evidence.

UNITED STATES OF AMERICA, }
District of Colorado. }

In Circuit Court.

DANIEL K. TENNEY, Comp't, }
vs.
SAM. RICH *et al.*, Def'ts. }

It is hereby stipulated and agreed that the confession of judgment and all other papers and also the judgment rendered in a certain suit and confession of judgment in favor of the complainant as trustee by the defendant Sam. Rich, which said judgment and proceedings were referred to in the complainant's bill, may be admitted in evidence and used on the final hearing of this suit the same as if the judgment, confession, and other papers had been admitted in evidence before the master.

(Signed) CHAS. I. THOMSON,
For the Defendant- Hirsch & May.

(Indorsed:) 2149. U. S. circuit court. Daniel K. Tenney *vs.* Sam. Rich *et al.* Stipulation that confession of judgment in favor of complainant by Sam. Rich may be used in evidence in final hearing. Filed May 23, 1888. William A. Willard, clerk.

283 And the confession of judgment, judgment, and execution heretofore and on, to wit, the 25th day of April, A. D. 1887, filed and enter-d in said court and in a certain cause in said court then pending wherein Daniel K. Tenney, trustee, was plaintiff and Samuel Rich was defendant, and referred to in the stipulation filed March 23d, A. D. 1888, are in words and figures as follows, to wit:

Confession of Judgment.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court in and for said District.

DANIEL K. TENNEY, as Trustee, &c., Plaintiff, }
vs.
SAMUEL RICH, Defendant. }

The said Samuel Rich does hereby own and acknowledge that he is indebted to the said Daniel K. Tenney in the sum of thirteen thousand six hundred and sixty-five dollars, and does hereby authorize and direct the clerk of the said circuit court of the United States in and for the district of Colorado to enter judgment in favor of the said plaintiff and against the said Samuel Rich for the said

s-m of thirteen thousand six hundred and sixty-five dollars, which he hereby confesses to be justly due and wholly unpaid. The said indebtedness is evidenced by one certain promissory note
284 dated Denver, Colorado, April 25th, 1887, and is in words and figures as follows, to wit:

$13,665.00. DENVER, COLORADO, *April 25th*, 1887.

"On demand I promise to pay to the order of D. K. Tenney, as trustee, thirteen thousand six hundred and sixty-five dollars, value received, with interest, at the rate of 8 per cent. per annum, from date until paid."

(Signed) SAM. RICH.

And the said Samuel Rich says that the consideration for said promissory note was and is as follows, to wit: the said Leopold Brothers and Company, a partnership doing business in the city of Chicago, State of Illinois, did sell and deliver on, to wit, the 21st day of February, 1887, goods, wares, merchandise, and clothing to the said Samuel Rich at the agreed price and value of nine hundred and ninety-five dollars and seventy-five cents; that no part thereof has been paid.

That Packard, McDonald and Bliss, a partnership doing business in the city of Chicago and State of Illinois, sold and delivered on, to wit, the 21st day of February, 1887, to the said Samuel Rich goods, wares, merchandise, and clothing of the agreed price and value of seventeen hundred and seventy-five dollars and fifteen cents, which the said Samuel Rich agreed to pay; that no part thereof has been paid.

That Myers, Engel & Co., a copartnership doing business in the city of Chicago and State of Illinois, sold and delivered on, to wit, the 21st day of February, 1887, goods, wares, merchandise, and clothing to the said Samuel Rich of the price and value of five thousand two hundred dollars, which said price and value the said Samuel Rich agreed to pay therefore; that no part thereof
285 has been paid.

That Henry Liberman & Co., a copartnership doing business in said city of Chicago, State of Illinois, sold and delivered to the said Samuel Rich on, to wit, the 21st day of February, 1887, goods, wares, merchandise, and clothing of the price and value of twenty-eight hundred dollars, which said price and value the said Samuel Rich agreed to pay therefor; that no part thereof has been paid.

That H. Swisky, who is doing business in the city of Chicago and State of Illinois, sold and delivered to the said Samuel Rich on, to wit, the 22nd of February, A. D. 1887, goods, wares, merchandise, and clothing of the price and value of six hundred and fifty dollars, which said price and value the said Samuel Rich agreed to pay therefor.

That Simon Hirsch & Co., a copartnership doing business in Kansas City, State of Missouri, loaned and advanced on the 16th day of February, A. D. 1887, to the said Samuel Rich the sum of

one thousand dollars in money; that no part of the same has been paid.

That Rosa Rich loaned and advanced to the said Samuel Rich on, to wit, the 15th day of June, 1886, the sum of seven hundred and fifty dollars in money, no part of which has been paid.

That Jacob Rich loaned and advanced to the said Samuel Rich, between Oct. 1, 1886, and 1 day of February, 1887, the sum of five hundred dollars in money, no part of which has been paid.

That the above-mentioned firms and persons from whom the said defendant, Samuel Rich, purchased goods and to whom he was indebted as aforesaid, agreed among themselves and with this defendant, the said Samuel Rich, and the said plaintiff, Daniel
286 K. Tenney, that he, the said Samuel Rich, should make and execute his said promissory note of the said Daniel K. Tenney as trustee for the creditors aforesaid, covering all the said indebtedness due to the said several firms and persons, and that the said aggregate sum of the said several amounts as aforesaid mentioned, to wit, the sum of thirteen thousand six hundred and sixty-five dollars, should become due and owing from the said Samuel Rich to the said Daniel K. Tenney as trustee; and the said Samuel Rich further says that each of the said firms above mentioned and the individual members thereof and the persons who sold and delivered goods, wares, merchandise, and clothing as aforesaid to the said Samuel Rich are each of them citizens of the State of Illinois, except the members of the firm of Simon Hirsch & Co., who are citizens of the State of Missouri, and except also as to Rose Rich and Jacob Rich, who are citizens of the State of Colorado.

And that the said Daniel K. Tenney was and is a citizen of the State of Illinois, and that the said defendant is a citizen of the State of Colorado, and that the amount involved in this proceeding is more than the sum *in* value of two thousand dollars.

(Signed) SAM. RICH.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Samuel Rich, being first duly sworn, deposes and says that he is the same person mentioned above, and that he has signed the above confession of judgment, and that the matters and things in the above and foregoing statement are true of his own knowledge, and that there is justly due and owing from the said Samuel Rich
287 to the said Daniel K. Tenney, as trustee, the sum of thirteen thousand six hundred and sixty-five dollars.

(Signed) SAM. RICH.

Sworn to and subscribed before me this 25th day of April, A. D. 1887.

(Signed) PERCY AUSTIN,
[SEAL.] *Notary Public.*

MONDAY, *April* 25, *A. D.* 1887.

DANIEL K. TENNEY, Trustee,
vs.
SAMUEL RICH. } Confession of Judgment.

At this day comes the said defendant and files herein his confession that he is indebted to the said plaintiff, as in his said confession set forth, in the sum of thirteen thousand six hundred and sixty-five dollars ($13,665.00).

Wherefore it is considered by the court that the said plaintiff do have and recover of and from the said defendant thirteen thousand six hundred and sixty-five dollars ($13,655.00), his damages by occasion of the premises in the cognovit mentioned, in form aforesaid confessed, and his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

(Signed) EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

288 $13,665.00. DENVER, COLO., *Apr.* 25, 1887.

On demand I promise to pay to the order of D. K. Tenney, as trustee, thirteen thousand six hundred sixty-five dollars, value received, with interest at the rate of 8 per cent. per annum from date until paid.

(Signed) SAM. RICH.

2137. Indorsed: Filed Apr. 26, 1887. Edward F. Bishop, clerk.

(Indorsed:) 2137. U. S. circuit court. Daniel K. Tenney, trustee, *vs.* Samuel Rich, defendant. Confession of judgment. Filed Apr. 25, 1887. Edward F. Bishop, clerk.

Judgment.

DANIEL K. TENNEY, Trustee,
vs.
SAMUEL RICH. } Confession of Judgment. 2137.

At this day comes the said defendant and files herein his confession that he is indebted to the said plaintiff, as in his said confession set forth, in the sum of thirteen thousand six hundred and sixty-five dollars ($13,665.00).

Wherefore it is considered by the court that the said plaintiff do have and recover of and from the said defendant thirteen thousand six hundred and sixty-five dollars ($13,665.00), his damages by occasion of the premises in the cognovit mentioned, in form
289 aforesaid confessed, and his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

Execution and Return. Fieri Facias.

U. S. Circuit Court, District of Colorado.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

The President of the United States of America to the marshal of the district of Colorado, Greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of Samuel Rich, defendant, in your district you cause to be made the sum of thirteen thousand eight hundred and eight (13,808) dollars and thirty-six (36) cents, to satisfy a judgment lately, to wit, on the 25th day of April, A. D. 1887, in the circuit court of the United States for the district of Colorado, sitting at Denver, rendered against Samuel Rich, defendant, for the damages which Daniel K. Tenney, as trustee, plaintiff, had sustained as well by occasion of the non-performance of certain promises and undertakings in that behalf, as set forth in the cognovit herein filed, as for the costs and charges in and about his suit in this behalf laid out and expended, whereof the said defendant, Samuel Rich, was convicted, as appears of record.

And have you these moneys at the clerk's office of the circuit court, in ninety days from the date hereof, to render to the said plaintiff for his damages and costs aforesaid.

290 And have you then and there this writ, with a return of your doings thereon in what manner you shall have executed the same.

[SEAL.] Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver, in said district, this 26th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the 111th year.

(Signed) EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

This writ received by me this 26th day of April, A. D. 1887.
(Signed) ZEPH. T. HILL, *Marshal.*

Marshal's Return.

DISTRICT OF COLORADO, *ss:*

DENVER, *April 27, A. D.* 1887.

I have duly executed this wit by making a personal demand upon Samuel Rich, the defendant, for thirteen thousand eight hundred and eight dollars ($13,808) and thirty-six cents (36) *cents*, the amount of the within writ, on this the 26th day of April, A. D. 1887. After diligent search, no goods, chattels, lands, or tenements belonging to the defendant Samuel Rich being found in my district.

This writ is therefore returned not satisfied on this the 26th day of April, A. D. 1887.

(Signed) ZEPH. T. HILL, *Marshal*,
By E. C. CURRER,
Deputy Marshal.

Marshal's Fees.

	Levying execution	$2 00
	Advertising property	
291	Miles travel, at 6 cents, going only	
	Commission on $—	
	Returning execution	
	Certificate of purchase	
	Total	$2 00

Paid by ——.

(Indorsed:) 35. Gen. No., 2137. Circuit court of United States, eighth circuit, district of Colorado. Daniel K. Tenney, trustee, *vs.* Samuel Rich. Execution.

Damages	$13,665 00
Costs	143 36
Total amount	$13,808 36

The marshal will collect interest from April 25th, A. D. 1887.
EDWARD F. BISHOP, *Clerk.*

Filed this 27th day of April, A. D. 1887.
EDWARD F. BISHOP, *Clerk*,
By F. W. TUPPER, *Deputy Clerk.*

W. S. DECKER,
Attorney for P'ff.

And afterwards and on, to wit, the 5th day of May, A. D. 1888, there were opened, published, and filed in said court and in said cause the depositions of Rudolph Ney, David May, and Adolph Hirsch on behalf of the defendants; and the said depositions are in words and figures as follows, to wit:

Depositions of Ney et al., Behalf Defendants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States, Sitting in and for said District.

D. K. TENNEY *et al.*
vs.
SAMUEL RICH *et al.*

292 MORRIS LEOPOLD *et al.*
vs.
SAMUEL RICH *et al.*

Testimony of witnesses on the part of the defendants May & Hirsch, taken at Leadville, Colorado, on the 2nd day of May, A. D. 1888, before Chas. A. Hinckley, Esq., a notary public in and for the county of Lake and State of Colorado, by consent of the parties, plaintiff and defendant, herein, and also in pursuance of the notice hereto attached and made a part thereof.

R. D. Thompson, Esq., appearing for the plaintiffs and A. T. Gunnell appearing for the defendants May and Hirsch.

RUDOLPH NEY, a witness produced, sworn, and examined on the part of the defendants May and Hirsch, testified as follows:

Q. Where do you live, Mr. Ney?
A. At present, in Leadville.
Q. How long have you lived there?
A. Since September, 1885.
Q. Are you acquainted with Samuel Rich, the defendant in this case?
A. Yes, sir.
Q. Did you know him in the month of March, 1887?
A. Yes, sir.
Q. State, if you know, when Mr. Rich went East early in the year 1887.
A. I don't exactly remember it.
Q. About, approximately?
A. It was in the early part of February, I think; I am not sure.
Q. You think it was in the early part of February?
A. Yes, sir.
Q. Did you see Mr. Rich to have any conversation with him before he went East?
A. Yes, sir; I had a conversation with him the day before he went East.

Q. Do you know when he made the mortgage to May and
293 Hirsch of the stock of goods on Harrison avenue?
A. The day he returned from the East.

Q. Now, regarding the conversation you had with him before he went East, I will ask you to state what, if anything, he said about having any notes in his possession or whether he showed you any?

A. He had several notes of Nathan—Ed. and Nat. Nathans, I believe their name is. He showed me one for twenty-five hundred dollars.

Q. Made payable to him?

A. Made payable to Sam. Rich.

Q. And signed by whom?

A. The Nathans—both of them.

Q. What did he say about having any other notes?

A. He said he had a few more and showed them to me. I didn't have them in my hands, but saw them.

Q. Who are Nathan Brothers, if you know?

A. They are brothers-in-law.

Q. Brothers-in-law of Rich?

A. Yes.

Q. Ed. and Nat. Nathan?

A. Yes, sir.

Q. Now, did you have anything to do with taking care of his business while he was away?

A. I took care of money and looked after bills, &c.

Q. I will ask you to state whether or not when he returned you turned over to him or caused to be turned over to him any money.

A. I turned over to him between seven and eight hundred dollars.

Q. After his return?

A. Yes, sir.

Q. Was that before or after he made the mortgage?

A. That was afterwards.

Q. How long after the mortgage was made?

294 A. Well, he drew money several times and I gave him as much as he asked for at the time. I gave him as high as three hundred dollars, two hundred dollars, and I gave him the balance about a week or so after the mortgage was given.

Q. How much money did you have in your possession belonging to Mr. Rich at the time he made the mortgage of his stock of goods to May and Hirsch?

A. Between seven and eight hundred dollars.

Q. Was that in any way included in the mortgage, or did you subsequently give that money to Sam. Rich?

A. It was not included in the mortgage. I gave it to him as he asked me for it.

Q. Now, after Rich returned did you have any conversation with him about the notes he had shown you before he went away?

A. Yes, sir.

Q. What, if anything, did he say as to whether he still had those notes?

A. I asked him if he couldn't do anything with those notes in order to help him. He said he could, but he wouldn't want to break the boys. He meant the Nathans.

Cross-examination by W. D. THOMPSON, Esq.:

Q. Mr. Ney, was it on the day Mr. Rich left that he showed you these notes signed by Nathan Brothers or some time prior?

A. It was either on the day before he left or on the day. I think it was on the day before he left.

Q. You say there were several of those notes?

A. Yes, sir.

Q. How many do you mean by several?

A. I can't tell you. He might have had two or three in his pocket.

Q. Did you see more than two?

A. I had one in my hand and I saw a few more.

Q. How many more?

A. I can't exactly tell you.

295 Q. Did you see more than one more?

A. I wouldn't like to swear to that.

Q. What date did those notes bear?

A. I don't exactly remember the date, I believe they were given in 1886.

Q. Do you recollect the month?

A. No, sir.

Q. Do you recollect how long they ran?

A. No; I don't remember that either.

Q. Do you know the amounts?

A. Twenty-five hundred dollars.

Q. Was that the amount of the note you saw?

A. Yes, sir; and Rich told me that he had more of the same amount.

Q. Did you see the note that he held in his hand?

A. I did not see the amount.

Q. How do you -now what the amount of that note was?

A. Not exactly; I couldn't swear to it.

Q. How were those notes signed?

A. I don't remember whether it was Nathan Brothers or Ed. and Nat. Nathan; I knew they were signed by both—by the Nathans.

Q. Do you know for what consideration, if any, they were given to Sam. Rich?

A. He told me for his interest in the cattle ranch.

Q. When did he tell you that?

A. The day he showed me the notes.

Q. How did he happen to show you the notes?

A. Why, we were talking about this situation before he went East, and he happened to think of them, I guess, and he showed me the notes.

Q. Did he say anything to you as to what he intended to do with those notes?

A. No; he didn't say anything then.

Q. Did he say anything of intending to use them to get credit?

A. He didn't tell me anything about his using them.

Q. Do you know that he continued to hold those notes?

A. If he told me the truth when he came back he must have had them the day he arrived.

296 Q. Do you know Mr. David May?

A. Yes, sir.

Q. Do you know whether or not he ever received one of those notes?

A. I do not know.

Q. Did you see the notes or either of them after he returned?

A. No, sir.

Q. Where was it you had your conversation with him on his return about those notes?

A. In his own store.

Q. How did he happen then to speak about them?

A. Why, we were still talking about this financial situation.

Q. You say that he didn't want to break up the boys?

A. Yes, sir.

Q. Who were the boys?

A. The Nathans.

Q. Who composed the Nathans?

A. Ed. and Nat.

Q. Who is Ed. Nathan?

A. A brother-in-law of Rich.

Q. What is he doing?

A. I don't know.

Q. Has he any business in his own name?

A. I don't know.

Q. Do you know him at all?

A. No, sir.

Q. Never saw him?

A. Never saw him.

Q. Do you know who Nat. Nathan is?

A. No, sir.

Q. Do you know if he is in business?

A. I don't know.

Q. In whose employ were you at the time these various conversations took place?

A. Mr. Hirsch's.

Q. Was this conversation between you and Mr. Rich about these notes on his return before or after this mortgage was given to May & Hirsch?

A. We had a conversation about the notes before he went East and when he came back, on his return. That was before the mortgage was given.

Q. You say you had between seven and eight hundred dollars of Sam. Rich's money when he returned?

A. Yes, sir.

297 Q. Will you state the circumstances under which you received this money?

A. Yes, sir; I received the money every night in the store, or two nights in the store.

Q. Under whose instructions?

A. Sam. Rich's.

Q. Were you not instructed to deposit the money in the bank?

A. Yes, sir.

Q. Why did you not deposit it?

A. I deposited some of it, but he ran his business in such a way I thought it best to keep the money in case any bills should come in; besides, he told me to make deposits in the bank, and they never gave him any credit, but credited the notes of which I didn't know anything.

Q. Where did you keep this money?

A. I had it in my pocket most of the time and sometimes in the safe.

Q. Were you in the employ of Hirsch all this time?

A. Yes, sir.

Q. Did Mr. Hirsch know about this money?

A. Yes, sir; I expect he knew I had some.

Q. Did you ever talk with him about it?

A. I guess I did.

Q. What was the tenor of those talks?

A. Why, nothing in particular; I sometimes gave him the money to put in his safe until the next morning; I didn't want to carry it at nights.

Q. Are you accustomed to carry Mr. Hirsch's money that way?

A. Sometimes; yes, sir.

Q. Before you turned this money over to Rich, did you have any talk with May & Hirsch about turning it over?

A. No, sir.

Q. How many days after the mortgage was given did you make the first payment to Mr. Rich?

A. I think he got the money a day or two after he arrived here; I forget now which. I told him the morning he came to come up to the store and get all of it; he didn't come. That was before the mortgage was given.

Q. Did you take charge of Mr. Rich's store under any
298 understanding with Mr. Hirsch?

A. Why, I didn't take charge of the store at all.

Q. I mean of the money?

A. Mr. Hirsch. I don't know as he knew anything about it at the time.

Q. You said awhile ago that you used to talk with Hirsch about the money.

A. Why, he knew in the evening—probably when I gave him the money to put in his safe—that it came from Rich.

Q. Are you certain you never told Mr. Hirsch where it came from?

A. I don't know about that; I am not certain.

Q. Give as nearly as you can the day when Mr. Rich called for the first money.

A. It must have been a few days after the mortgage was given.

Q. How many days?

A. Probably two or so.

Q. Why didn't you give him all the money?
A. Because he didn't ask for it all.
Q. Do you know what he did with the money?
A. No, sir.
Q. You say you had and held for Mr. Rich between seven and eight hundred dollars. You can give the exact amount.
A. No, sir.
Q. Give the amount, as near as you can recollect.
A. That is as near as I can get at it.
Q. Didn't you keep any memorandum of the amount?
A. I handed it to Rich when he came back.
Q. Did Mr. May know you were receiving this money from Mr. Rich?
A. I don't know whether he did or not.
Q. Why was not this money turned over to May & Hirsch at the same time the stock of goods were turned over to them?
A. I don't know; I had nothing to do with that at all.
Q. Did Mr. Hirsch then know that you had that money?
299 A. I expect he did; I do not know; I am not certain.

Redirect examination:

Q. You say that it was on the day of his return from the East that he made the mortgage to May & Hirsch?
A. Yes, sir.
Q. And it was on the same day that he told you that he still had the notes of Nathan Brothers?
A. Yes, sir; a few hours before he made the mortgage.
Q. And you turned over to him the money that you had taken from his clerks at the store after the mortgage was given?
A. Yes, sir.
Q. Turned it over to Rich himself, did you?
A. Yes, sir; and I think he sent his wife around once to get some hundred or two hundred dollars.
Q. Do you know of any other property that Rich had at that time?
A. I know he had a house.
Q. Where?
A. On West 7th street.
Q. Was it one lot or two lots, do you know?
A. I forget now how many lots; I have been there quite often.
Q. Was it a residence?
A. Yes, sir; the place he resided.
Q. Do you know approximately what it was worth?

Objected to.

Q. Do you know anything of the value of real estate in this town?
A. Not very much; I haven't bought any. I judge that house was worth about twenty-five hundred dollars.

Objected to, as the witness has not shown himself competent to testify as to values.

Q. Have you known the property to be bought and sold and known what price was paid for it in this town?

A. Yes, sir.

300 Q. If you wanted to buy a piece of real estate in this town would you take your own judgment as to what it was worth?

A. Yes, sir; I think I would for myself.

Q. Do you know what the value of property was in that part of town that he lived in?

A. Yes, sir; it was very high then.

Recross-examination:

Q. Will you state where these conversations about which you have testified you had with Mr. Rich in reference to the Nathan notes were held?

A. At Mr. Rich's store.

Q. Where, in Leadville?

A. In Leadville; yes, sir.

Q. Where is this house located that you say was owned by Sam. Rich?

A. On 7th street below Pine street.

Q. Do you know of any property that has been sold in that vicinity?

A. Yes, sir.

Q. What properties?

A. Mr. Hirsch here sold his property.

Q. When did he sell it?

A. He sold it last fall.

Q. How near was Mr. Hirsch's property to this?

A. His property was numbered 200, and Rich's, I believe, was 208; very close to it.

Q. What did Mr. Hirsch sell his property for?

A. Two thousand dollars.

Q. What did Mr. Hirsch's property embrace? How many lots?

A. Two lots.

Q. What kind of a house?

A. It was a very nice house.

Q. Frame or brick?

A. Frame.

Q. One or two story?

A. One story.

Q. How many rooms?

A. I don't know.

Q. What kind of a house was this house that belonged to Sam. Rich?

301 A. Quite a nice little house.

Q. Frame or brick?

A. Frame.

Q. How many rooms?
A. I really don't know.
Q. You say this belonged to Sam. Rich. How do you know that?
A. He always claimed it belonged to him.
Q. Do you know if his children had any interest in it?
A. I don't know that they had; I presume they did.
Q. You don't mean to say that he owned it in his own right?
A. He always told me that he owned the house.
Q. That is all you know about it, is what he told you?
A. Yes, sir.

It is hereby stipulated by and between the parties that inasmuch as the witness Ney desires to leave Leadville before his testimony can be extended that the signing of said testimony is waived, and that the same shall have the same force and effect as though signed by said witness.

DAVID MAY, a witness produced, sworn, and examined on the part of the defendants May & Hirsch, testified:

Q. Are you one of the defendants in this case?
A. Yes, sir.
Q. State if you are acquainted with Samuel Rich, the defendant in this case.
A. Yes, sir; I am.
Q. State what property, if you know, Rich was possessed of at the time he gave a chattel mortgage to yourself and Adolph Hirsch on the 24th of March, 1887, besides that which was included in said mortgage.
A. He was the possessor of a half interest in a piece of real
302 estate situated on 7th street in the city of Leadville.
Q. You say he was possessed of a half interest?
A. It was a piece of real estate which belonged to his first wife—in other words, in his first wife's name—and he became the inheritant of that half interest.
Q. Did his first wife die?
A. Yes, sir.
Q. When?
A. About a year and a half prior to that time.
Q. Do you know how many children they had?
A. Two children.
Q. How long have you lived in Leadville?
A. About ten years.
Q. Have you bought and sold real estate to any extent in this city?
A. Yes, sir; I have bought and sold real estate. I sold two pieces on the opposite side of that property about four months ago.
Q. Were you acquainted with the value of real estate on the 24th of March, 1887, in this town?
A. Yes, sir.
Q. You had dealt considerable in real estate up to that time?

A. Yes, sir; I took pains to investigate what that piece of property was worth, because I took a trust deed upon that property of his undivided half interest which I held up to the time he consummated that mortgage on his stock of goods. I then returned that trust deed to him. But at the time of the execution of the mortgage I then took it upon myself to see what the property was worth and what it would realize in the market.

Q. What would it realize?

A. Twenty-five hundred dollars—that is, the total his undivided half was twelve hundred and fifty dollars.

Q. Now, you say you had a trust deed upon that at the time the mortgage was made to you & *and* Hirsch?

A. Yes, sir.

Q. Had you recorded that deed of trust?

A. No, sir; just held it.

Q. Then, when he made that mortgage——

303 A. I returned the deed of trust to him. The deed of trust was given to me to get a man to indorse for him in the bank, on which was paid three or four hundred dollars, and on the execution of that mortgage I returned the deed of trust to him.

Q. Now, as I understand you, you say you held a deed of trust on that property for one-half interest from Rich, and that the deed of trust was to secure one of the notes you indorsed for him, which was subsequently secured by the mortgage given by May & Hirsch and was one of the notes involved in this litigation?

A. Yes, sir.

Q. And you then delivered to him upon the execution of the chattel mortgage his mortgage upon the half interest in the real estate?

A. Yes, sir.

Q. What, if anything, did you know, Mr. May, from conversations with Rich or otherwise, about his having any notes made payable to him by Nathan Brothers?

A. He had at the time I discounted the first note for him. When I got his first money on the first note of twenty-five hundred dollars——

Q. About when?

A. Oct., 1886. He came to me with a note of twenty-five hundred dollars, executed by Ed. and Nat. Nathan, and he told me he needed some money and wanted to sent that note to Kansas to get it discounted, but it was returned by Simon Hirsch, saying he could not use it on his bank, as he was using all the limit he had; but Simon endorsed the note on the back, saying he could use the note in Leadville. I got it discounted for him, and at that time he told me he sold his interest in the cattle ranch for ten thousand dollars, for which he received four notes of twenty-five hundred dollars, equal amounts.

304 Q. That, you say, was in Oct., 1886?

A. Yes, sir.

Q. Did you have any subsequent conversation with him in reference to the other notes?

A. Yes, sir; at the time when he gave me the trust deed on that property. I refused; I told him I did not care to be bothered endorsing his paper continually, and I didn't care to do it. He offered me then a note of these Nathans as collateral, so he could meet payments in the bank. I told him I didn't care for any collateral. I agreed to take that piece of property down here in preference, as I knew the value of it; if I had to pay the note in the bank it would almost cover the obligation which I assumed there and then. He told me that these Nathans owed him money and expected to ship cattle and would send him seventy-five hundred dollars.

Q. Do you know of his having any other property besides this you have mentioned at the time of the mortgage of the stock of goods to you?

A. No, sir; I do not; simply what I heard from Rudolph Ney about money in his possession, but I was not aware of it, only what I have heard, heresay; he had some jewelry.

Q. What was the jewelry worth?

A. It was jewelry belonging to his first wife.

Q. What was it?

A. I loaned him seven hundred dollars on it once.

Q. Did you deliver it back to him again?

A. He had redeemed it; I had given it back to him some time prior to the mortgage.

Q. How long prior to the mortgage?

A. Some four or five months in the fall previous.

Q. State whether or not at the time you took the mortgage you and Hirsch agreed with Rich to turn over to him the proceeds of the sale, all except what it would take to pay your debts.

305 A. The mortgage provided that. He turned over the property; we were to get our money and turn over to him the surplus.

Cross-examination:

Q. What was the date of that fifteen-hundred-dollar note you mentioned?

A. Which I indorsed in the bank?

Q. This collateral security for which this trust deed was given?

A. Do you mean the note which I endorsed in the bank or do you refer to that note he offered as collateral security?

Q. I am speaking of the note secured by the trust deed.

A. That was February, 1887, just prior to his departure.

Q. Just the day before his departure?

A. I can't say; he left early in February; I don't recollect.

Q. Isn't it your recollection that he got you to indorse that fifteen-hundred-dollar note the day before he left?

A. I don't recollect the exact date; it was the early part of February. I can give you the exact date; I have the trust deed acknowledged before a notary public; I didn't make any record of it.

Q. Now, you say you returned this trust deed to him?

A. Yes, sir; the day after the mortgage was given.
Q. Where was it?
A. The next day, in my own store, Rich called for it.
Q. Did Rich call for it?
A. Yes, sir.
Q. What was said between you at the time? Was it a friendly conversation?
A. Yes, sir. He said the mortgage which he gave last night covered that same note which I had paid in the bank, and he desired that trust deed back. I says, Certainly; you are entitled to it.
306 Q. Was there any bargain made at the time the chattel mortgage was given that that was to be returned?
A. No, sir; nothing said about it.
Q. You say this property was worth twenty-five hundred dollars?
A. Yes, sir.
Q. Do you make that estimate on your own knowledge or on what you have learned from others?
A. I make it on my own knowledge, as I owned property on the opposite side of the street.
Q. What size property is it?
A. Seven or eight roomed house.
Q. Frame house?
A. Frame house; yes, sir.
Q. Do you know if that property has since been sold by order of court?
A. No, sir; I know nothing about it. I know money was borrowed on the property. I never knew it was sold.
Q. When did you first receive the note of the Nathan Brothers about which you testified?
A. As I stated, in the early part of the fall of 1886, along about October, I think.
Q. When was that note due you received on the Nathan Brothers?
A. It was for ninety days, I believe.
Q. What date did it bear?
A. I think Aug., 1886, I am not positive, and given for ninety days. I know the note came due while I was East. It came due in December. I disremember whether ninety days or four months. I was telegraphed in New York when it was protested.
Q. The note was not paid?
A. No, sir.
Q. Do you know why it was not paid?
A. No, sir.
Q. Do you know the Nathans?
A. Yes, sir.
Q. Who are the Nathans?
A. Nat. Nathan is the owner of a large cattle ranche in the southern part of the State.
Q. Why didn't you collect the note then?
A. It was not given to me directly; I simply indorsed.

307 Q. You had it to pay?

A. No, sir; not at that time. It was renewed and a new one given instead. Rich made promises that these Nathans were to ship cattle and these notes would be liquidated by them. They were not in a condition to ship cattle, and he asked me to go to the bank and renew it. I asked Mr. McNeil if he would renew the note with the same endorsers, and he said certainly, and he would take a new note.

Q. What has become of that Nathan note?

A. After it was renewed the second time I bought it in.

Q. Where is it now?

A. It is in the possession of the court. It is in evidence in this case—one of the exhibits.

Q. Was it ever paid?

A. Certainly. I paid it.

Q. I mean by the Nathan Brothers.

A. No, sir.

Q. Which Nathan is it that owns that large ranch?

A. Nat. Nathan.

Q. Where is that ranch?

A. The southern part of the State.

Q. Do you know which county?

A. No, sir.

Q. You are speaking solely on hearsay when you say he owns the ranch?

A. Certainly; but I was told——

Q. Of your own knowledge do you know that he has a cent?

A. Simply what I was told. I never saw it.

Q. Is it not your experience that men of large means and property allow their notes to be unpaid or unprotected?

A. Well, there are circumstances in matters of that kind, you know. This was a note which was given to Rich, which was a family matter, and at the time this note became due I asked McNeil about the responsibility of them, and he told me they were worth a good deal of money.

Q. Of your own knowledge you knew nothing of their money?

A. No, sir.

308 Q. Was not Ed. Nathan a partner of Sam. Rich?

A. I think so. It used to be Nathan & Company, and Nathan Brothers, then Nathan Brothers and Company—Ed., Nat., and Rich. Rich failed in Pueblo and he had no name, and the business was continued in the name of the Nathans until he passed through bankruptcy, and then it was in Sam. Rich. That is the status of that affair.

Q. Do you know anything of the affairs of Sam. Rich and the Nathans as between themselves?

A. Simply what I am told; that is all.

Q. Don't you know as a fact that Sam. Rich owes the Nathans a good deal of money?

A. No, sir; I know different. Sam. Rich told me he first started that ranch with his money.

Q. When did Rich buy out Nathan?

A. In 1885.

Q. Do you know if he paid him in full for his interest in the business?

A. I don't know a thing about their affairs. I never investigated them. I was told by Rich that Ed. Nathan owed Rich.

Q. Now, you say Sam. told you that he had four notes?

A. That is what he told me.

Q. Did you ever see the four notes?

A. I saw two of them. I saw the first one here and the second one when I took the mortgage on his house.

Q. Now you mentioned some jewelry; when did you first loan money on that jewelry?

A. In the summer of 1886. That jewelry was in soak in Trimble & Hunter's bank for seven hundred dollars, left as collateral security. He then told me that he had a note in the bank for seven hundred dollars and had left his wife's jewelry as collateral, and he asked me if I would not go and take out that jewelry and
309 keep it until he could pay it. I said I would, as it must be worth seven hundred dollars if Trimble & Hunter loaned that much on it.

Q. Did you ever loan money on it the second time?

A. No, sir.

Q. Do you know if the jewelry belonged to Sam. Rich at the time he made that mortgage to you?

A. I do not. I heard that he gave it to his other wife.

Q. Do you know Nat. Nathan personally?

A. Yes, sir; when I say personally it is just by slight acquaintance—business acquaintance. I am acquainted with Ed. Nathan personally.

Q. What is Ed. Nathan doing now?

A. I don't know. I haven't seen him for a year.

(Signed) DAVID MAY.

Subscribed and sworn to before me this 4th day of May, A. D. 1888.

[SEAL.] (Signed) CHAS. A. HINCKLEY,
Notary Public.

Commission expires Dec. 18th, 1888.

ADOLPH HIRSCH, a witness produced, sworn, and examined on the part of the defendants May & Hirsch, testified:

Q. You are one of the defendants in this suit, I believe?

A. Yes, sir.

Q. Do you know anything about property that Rich owned at the time he gave you and May a mortgage on his stock of goods in March, 1887?

A. I know he owned half of that house and lot and Rudolph had seven or eight hundred dollars.

310 Q. Rudolph who?

A. Rudolph Ney.

Q. Where did he get that seven or eight hundred dollars?

A. He took the receipts from the store where he paid bills and drafts and was attending to his business. I wasn't at home when he made that arrangement to do his business. I was in Glenwood.

Q. You was not at home when he agreed to do that business?

A. No, sir; he had a brother-in-law in there who gambled his money two or three times.

Q. He paid Rudolph to take the money and manage the business?

A. Yes, sir; and hold the money.

Q. When you came back did Rudolph have some of his money?

A. Yes, sir; seven or eight hundred dollars.

Q. How do you know?

A. He had it in the safe part of the time—in Schultz and Dale's safe—and once in awhile in my safe.

Q. Was that paid to Rich after you took this mortgage?

A. Yes, sir.

Q. What, if anything, did Rich say to you at any time, and when, about notes he had of Nathan Brothers?

A. He told me three or four months before this one I endorsed for him that he invested ten thousand dollars cash with Nat. Nathan in that cattle business, and that he h-d been trying to quit that cattle business, and that they was a little hurt on account he got married to my sister, and couldn't get a settlement. I didn't know anything about these notes; he never showed me those notes, only he had ten thousand dollars in that cattle business and was well fixed and wanted to get a settlement, and to my knowledge he went down to the ranche to get a settlement with them and he couldn't get any settlement, and that Nat. Nathan was hot because he got
311 married over again to my sister, and he wanted to get a settlement with him, which he went down for on purpose several times.

Q. Did he tell you he had ten thousand dollars invested in that ranch?

A. Yes, sir, which he put in in cash.

Q. How long was that before March, 1887—that conversation?

A. About three or four months before; three months. I didn't pay any special notice *of* it.

Q. Do you know the locality of that property in which you say he had a half interest in this town?

A. I lived close by there several years; neighbors. I am well acquainted with it.

Q. Have you bought and sold real estate in this town?

A. Yes, sir; bought and sold.

Q. Do you know the value of real estate in this town?

A. Yes, sir.

Q. What was the value of that property?

A. That property would bring any time on a forced sale two thousand dollars. To have time it is worth twenty-five hundred dollars. It is a large lot.

Q. How large is the lot?

A. All I know is from the looks. It is more than one lot.

Q. Is the house as good or better than the one you sold, which Rudolph Ney testified to?

A. It is much better. My wife wouldn't live in it. I intended to live in Kansas City, but I never lived in it after I moved out.

Q. It is better than yours?

A. O, yes; mine was one of the oldest houses in town. It was of no value whatever.

Q. Is Rich's house a plastered house?

A. Yes, sir.

Cross-examination:

312 Q. You never saw these Nathan Brothers' notes, did you?

A. Not to my knowledge. He told me that he had ten thousand dollars first invested with Nat. Nathan in that cattle ranch. He never drew a dollar out of it at the time.

Q. How old are Mr. Rich's children?

A. Of the first wife?

Q. Yes, sir.

A. The girl must be about twelve years old and the boy must be eight or nine at that time; they may be a year older now.

Q. This boy and girl had an undivided half interest in that property, did they not?

A. That is what he said—a half.

Q. Now, Mr. Hirsch, from your knowledge of values and properties, would you say that the property would sell as readily where infants had an undivided interest as it would where no one else was interested?

A. I would give, any time, two thousand dollars cash for the house, right now.

Q. Answer my question.

A. I don't understand it.

Q. If you could not get a complete title because of the children not being of age, would you be willing to pay as much for the property as you otherwise would?

A. I would want a good title, sure enough; it could be had from the court, I presume.

Q. You are estimating the value of this property with the title clear and without any incumbrance or objections?

A. Yes, sir; the title should be clear.

Q. You are basing your estimate on the value of this property on the theory that the title is clear and a good title could be given?

A. Yes, sir; and a good title given.

Q. Do you know that this property has since been sold?

A. I knew it was mortgaged; I didn't know it was sold.

313 Q. Who gave the mortgage?

A. That I don't know. I seen the mortgage in the paper, just glancing over it, that he mortgaged his property, and he transferred the property about a week later, after the note was given. I recollect that day.

Q. Do you know what was done by Rich with the money he got from Rudolph Ney?

A. No, sir; he kept it for himself, I expect.

Q. Do you know of any bills in town being paid by Rich?

A. No, sir.

(Signed) ADOLPH HIRSCH.

Subscribed and sworn to before me this 4th day of May, A. D. 1888.

(Signed) CHAS. A. HINCKLEY,
[NOTARIAL SEAL.] *Notary Public.*

Commission expires Dec. 18th, 1888.

Defendants May & Hirsch here offer in evidence certified copy of deed from Samuel Rich to Rebecca and Louis Rich, marked "Exhibit A," and received without objection.

And also offer in evidence certified copy of petition made by Samuel Rich and filed in the office of the district clerk of the district court of Lake county for leave to sell the real estate mentioned in said deed, marked "Exhibit B," the same being received without objection.

314 EXHIBIT A.

(Copy.)

This deed, made this 13th day of June, in the year of our Lord one thousand eight hundred and eighty-seven, between Samuel Rich, of the county of Lake and State of Colorado, of the first part, and Rebecca Rich and Louis Rich, of the county of Lake and State of Colorado, of the second part, witnesseth:

That the said party of the first part, for and in consideration of love and affection and the sum of one dollar to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, sell, convey, and quitclaim, unto the said parties of the second part, their heirs and assigned forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following-described real estate, situate, lying, and being in the county of Lake and State of Colorado, to wit:

The west fifteen (15) feet off of lot No. five (5) and all of lot No. six (6), in block No. fifty-one (51), in Stevens' and Leiter's subdivision of U. S. survey No. 271, said premises being known as No. 208 West 7th street, in the city of Leadville, Colorado:

[SEAL.]

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title,
315 interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit,

and behoof of the said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) SAMUEL RICH. [SEAL.]

Signed, sealed, and delivered in presence of—

——.

——.

STATE OF COLORADO, } ss:
Lake County, }

I, H. P. Krell, a notary public in and for said county, in the State aforesaid, do hereby certify that Samuel Rich, who is personally known to me to be the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this thirteenth day of June, A. D. 1887.

[NOTARIAL SEAL.] (Signed) H. P. KRELL,
Notary Public.

Filed for record at 10.45 o'clock a. m. June 13th, 1887.

F. M. REARDON, *Recorder,*
By W. E. McNENNEY, *Deputy.*

316 STATE OF COLORADO, } ss:
County of Lake, }

I, Edward Dale, recorder in and for said county, in the State aforesaid, do hereby certify that the within and foregoing is a true and correct copy of quitclaim deed No. 66316, as appears of record in my office in Book 67, page 480.

[SEAL.] Witness my hand and official seal this 2nd day of May, 1888.

(Signed) EDWARD DALE, *Recorder,*
By R. F. CAFFERY, *Deputy.*

Copy. Quitclaim deed. Samuel Rich to Rebecca Rich and Louis Rich. Exhibit "A," C. A. H.

317 EXHIBIT B.

STATE OF COLORADO, } ss:
Lake County, }

In the District Court within and for said Lake County.

To the honorable district court within and for said county:

Your peti-oner, Samuel Rich, respectfully represents that he has been by the hon. county court of Lake county, Colorado, appointed

guardian of Rebecca Rich and Louis Rich, minor heirs of Julia Rich, deceased, and is now the guardian of said minors, as will appear on the hearing hereof by the production of his letters of guardianship in evidence; that said minor heirs & wards as aforesaid are respectively aged twelve and eight years; that said wards are by inheritance from the said Julia Rich and by gift from the peti-oner the owners and possessors of the following real estate, situate in the city of Leadville, county of Lake and State of Colorado, to wit:

The west fifteen (15) feet off of lot No. five (5) and all of lot No. six (6), in block No. fifty-one (51), in Stevens' and Leiter's subdivision of U. S. survey No. 271, and addition to said city of Leadville, together with improvements thereon of the estimated value of about fifteen hundred dollars, and more other over which your petitioner is exercising guardian care.

That the income of the said estate of the said minors is insufficient to maintain and educate them, and that it will be for the benefit of said minors and essential to their proper maint*a*inance, education, and support that the said real estate be sold and the proceeds devoted, under the directions of the court, to the use of said minors as aforesaid.

318 Your peti-oner further represents that in his opinion he will be enabled to sell said described premises for a better price if he is by the court permitted to sell said estate at private sale, and that by so doing the interests of said wards will be best subserved.

Wherefore, in consideration of the premises, your petitioner prays leave to sell the said above-described real estate according to the order of this court and the statute in such case made and provided.

(Signed) SAMUEL RICH.

STATE OF COLORADO, } ss:
Lake County, }

Samuel Rich, being duly sworn according to law, on oath deposes and says that he knows the contents of the foregoing petition, and that the matters and things therein set forth are true of his own knowledge.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me this 13th day of June, A. D. 1887.

[NOTARIAL SEAL.] (Signed) APPLETON J. IDE,
Notary Public, Lake County, Colorado.

(Indorsed:) No. 3510. *Ex parte* Samuel Rich. Petition to sell real estate. District court, Lake county. Filed June 13th, 1887. J. H. Player, clerk, by Geo. P. Brown, deputy. Wm. H. Hall, att'y for petitioner.

319 STATE OF COLORADO, } ss:
County of Lake, }

I, Joseph H. Playter, clerk of the district court aforesaid, do hereby certify that the above and foregoing is a true, full, and correct transcript of the petition to sell real estate of Samuel Rich, guardian of minors, etc., in the case numbered 3510 on the dockets of this court, as the same now remains of record in my office therein.

Witness my hand and official seal this 2nd day of May, A. D. 1888.

[SEAL.] (Signed) JOS. H. PLAYTER,
Clerk District Court,
By GEO. E. BROWN,
Deputy Clerk.

(Indorsed:) No. 3510. Certified copy of petition of Samuel Rich, etc. Exhibit "B," C. A. H.

320 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, Sitting within and for said District.

D. K. TENNEY *et al.*, Plaintiffs, }
vs.
SAMUEL RICH *et al.*, Defendants. }

You are hereby notified that we will, on Wednesday, the 2nd day of May, A. D. 1888, at the hour of ten o'clock in the forenoon of said day, commence the taking of testimony under the decreed order of the court herein, on behalf of May & Hirsch, before Chas. A. Hinckley, a notary public, at 431 Harrison Ave., Leadville, Colorado, and will continue the taking of said testimony from time to time until the same shall be completed as to the witnesses in Leadville, and you can be present if you desire.

(Signed) BISSELL & GUNNELL,
Att'ys for David May and Adolph Hirsch.

To the plaintiffs herein and R. D. Thompson, their attorney.

(Indorsed:) D. K. Tenney *et al. vs.* Samuel Rich *et al.* Notice to take depositions. Bissell & Gunnell, att'ys for def'ts May & Hirsch.

321 STATE OF COLORADO, } ss:
County of Lake, }

I, Charles A. Hinckley, a notary public in and for said county, in the State aforesaid, the commissioner duly selected by the parties to take the testimony of witnesses in the said cause, wherein D. K. Tenney *et al.* are plaintiffs and Samuel Rich *et al.* are defendants, do hereby certify that previous to the commencing of the taking of said depositions each of said witnesses, to wit, Rudolph Ney, David May, and Adolph Hirsch, were separately and duly sworn by me to

testify the truth in relation to the matters and things in controversy between the said plaintiffs and defendants so far as they should be interrogated concerning the same; that said depositions were taken by me on the 2nd day of May, 1888, at the city of Leadville, Lake county, Colorado, and after the taking of the same the said witnesses, David May and Adolph Hirsch, subscribed and swore to their depositions, the oath being administered by me, the signing of the deposition of Rudolph Ney being waived by the parties hereto.

Fees, $20.60, paid by the defendants May & Hirsch.

Witness my hand and notarial seal this 4th day of May, A. D. 1888.

[NOTARIAL SEAL.] (Signed) CHAS. A. HINCKLEY,
Notary Public.

Commission expires Dec. 18th, 1888.

(Indorsed:) 2149. D. K. Tenney *et al. vs.* Sam. Rich *et al.* Depositions of Rudolph Ney, David May, & Adolph Hirsch for def't-May & Hirsch. Opened, published, and filed May 5, 1888. William A. Willard, clerk. Fees, 20.60, paid by May & Hirsch.

322 And afterwards and on, to wit, the 6th day of June, 1888, came Andrew W. Brazee, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of testimony on behalf of complainant, and the said report is in words and figures as follows, to wit:

Examiner's Report—Testimony Behalf Complainant.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Be it remembered that on the 24th day of May, in the year of our Lord one thousand eight hundred and eighty-eight, in pursuance of verbal notices, the parties to the cause therein and herein also mentioned appeared before me, Andrew W. Brazee, an examiner in chancery of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit:

The complainants in said cause, by R. D. Thompson, Esq., their solicitor, and the defendants, by J. B. Bisseli, Esq., their solicitor.

And on this day Samuel Rich, of the apparent age of 40 years, — to testify and the truth to say as witnesses on the part and behalf of the complainant in a certain suit or matter of controversy pending and undetermined in the circuit court of the United States for the district of Colorado, at Denver, in said district, wherein D. K. Tenney *et al.* are complainants and Samuel Rich *et al.* defendants.

And the said witness, having by me been first duly cautioned and sworn according to law to testify the truth, the whole truth,
323 and nothing but the truth in the suit and matter of controversy aforesaid, was examined before me on oral interrogatories propounded to him by counsel as in his depositions following appears—that is to say:

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States, Sitting in and for said District.

D. K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Respondents. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Respondents. }

Testimony of Samuel Rich, a witness on the part of the complainants in the above-entitled cause, taken on the 24th day of May, A. D. 1888, before Honorable Andrew Brazee, examiner in chancery, at his office, in the city of Denver, county of Arapahoe and State of Colorado—the complainants appearing by R. D. Thompson, Esq., their solicitor, and the respondents by J. B. Bissell, Esq., their solicitor—whereupon the following proceedings were had:

324 Deposition of SAMUEL RICH, a witness produced on behalf of complainants in rebuttal, who, being first duly sworn according to law and interrogated orally, testified as follows:

Direct examination by Mr. THOMPSON:

Q. What is your name, age, occupation, and place of residence?
A. Samuel Rich; Denver, Colorado; occupation, clerk.
Q. Mr. Rich, Mr. Rudolph Ney, in his testimony taken in this case, testified that he saw in your possession just prior to the time you went East in 1887 several notes signed by Ed. Nathan and Nat. Nathan. Will you state how many notes you had so signed, the amounts thereof, and what, if anything, you did with them?
A. I had two notes of twenty-five hundred dollars each given to me by Nat. Nathan and Ed. Nathan. What I have done with them—when I went East I thought to dispose of them to raise money to pay bills. I gave one to Dave May when I came back to discount for me. That was in September, 1886, when I came back from the East. I did not try to dispose of them in the East, because the parties that I owed a balance on the spring bill they did not urge me to pay them and so I thought I would get along without them, but when I came home I had some notes to meet for goods which I had bought the following fall on thirty days' time, and I went to Dave May and he discounted one of these notes for me for twenty-five hundred dollars; the other one, in the spring of the year when I went East, I gave to Meyer Ingell and Company. I bought goods—I got goods—on the face of that note. This is the only two papers I ever owned or had. I don't believe I ever showed them to Mr. Ney, because I never had any business with Mr. Ney whatever. The only business I had with Mr. Ney was in the spring of the year

when I went East. I told him to take the receipts of money
325 for me from my store and deposit them in the bank. This is the only business I ever had with Mr. Ney.

Q. Do you know what has become of the note that you gave to Dave May or the note that you gave to Myer Ingall and Company?

A. I don't know what became of them. I believe Dave May has kept them. I know he has got it because he has discounted it in the bank and I had no more chance to take it up. But Myer Ingall's note——

Q. You never saw it since you disposed of it?

A. No; I never saw it since.

Q. Mr. Rich, how long did you live in Leadville?

A. I lived there 9 years; since '78; since the spring of 1878.

Q. Mr. Ney and David May and Rudolph Hirsch, in their testimony taken in this case, stated that you owned a house in Leadville which was worth between two thousand and $2,500. State what you know about that house and what you know of its value.

A. In the first place, I never owned a house in my life in Leadville. That house was built for my wife, and in the beginning she owned it. That was the first thing. The next thing is, when she died that was all there was left for the children, was that house. On the 12th day of February, 1886, before I went East—it was on a Saturday—I went to Dave May and said to him, "Dave, I have got a couple of notes to meet——

Mr. BISSELL: You need not state that conversation; it is not asked for and is not competent testimony; I object to it.

A. Mr. Dave May took a deed of trust on that house. Mr. C. I. Thompson made it out himself.

Q. You are not answering my question. I want to have you answer what the value was.

326 A. I had been trying to sell it for the children and had offered it at thirteen hundred dollars to three or four different parties living at Leadville and could not get it.

Mr. BISSELL: I move to strike out the answer on the ground that it is no evidence of value.

Q. When did you try to sell the house?

Objected to by Mr. Bissell as incompetent and as making no evidence of value and as making no difference whether he had tried to sell it any time or what he had offered to sell it for.

A. I tried to sell it last year.

Q. What time?

A. Last May; I went up there and got a permit from the court to sell it from Judge Goddard, but there was a mistake about something in the advertisement and it had to be delayed to another time, thirty days, and I then offered it for $1,300 and could not get it; I was offered by two different parties; I was offered by Dick Matz $1,250; that was the highest.

Q. Now, what interest, if any, did you have in that house?

Objected to by Mr. Bissell as not the proper method of proving it.

A. Well, I don't know as I had any more interest than I was entitled to; half—half to me and half to the children; that is all that I had; I had to get a permit from the court to sell it.

—. How many children have you?

A. Two.

Q. Were they children of your first wife?

A. Yes.

Q. When did your first wife die?

A. She died in the winter, I believe, in December, 1886.

Q. Did the property about which you have testified stand in her name at the time of her death?

A. Yes.

Q. And belonged to her?

A. Yes, always; I never owned a bit of it.

327 Q. Now state, Mr. Rich, what had been done with that property prior to the time that you made this chattel mortgage to May & Hirsch.

Objected to by Mr. Bissell as not the proper method of proving it.

A. Dave May had a deed of trust on it from the 12th day of February—that was before I went East to buy them goods—for a thousand dollars.

Q. Mr. May, in his testimony in this case, testified that he afterwards gave you back this trust deed. Will you state when and where and how it was?

A. After the stock of goods was turned over—that is, after it was sold under the hammer—I said, "Dave, this trust deed from the house of the children don't belong to that chattel mortgage. I hope you have robbed me out of enough and you can't rob these children. I want you to give that deed of trust back, so that the children will have something anyhow." So May says he will see. So I said there was no seeing about it; this is not included in the chattel mortgage. So he says all right. I went home and my wife says to me, "Did May give you up the deed of trust?" I says, "No; he says he will give it back to-morrow." The next day I went in there and May gave me the deed of trust back. I took it and tore it up before his eyes.

Q. By what means have you and your wife supported yourselves since the making of this chattel mortgage to May & Hirsch?

Objected to by Mr. Bissell as a matter of no importance whatever and as not figuring in the inquiry now before the court.

A. My wife started a boarding-house in Leadville and we had no means to support ourselves. I could not get work. I tried to get work and couldn't. She took a few boarders, and so everybody
328 advised me to go to Denver; that I might get something to do in Denver. I came and could not get anything to do for some time to come. I lived off from my brother and his hard work and he was not able to have any more money, and so I told him I

had had a trunk with my wife's clothes and if he could pawn it anywheres so that I could pay him back, and I sent for my wife to come down here and maybe we could start a boarding-house here and do better. I felt ashamed to go with the trunk myself to pawn it and so I sent him. He took it to Mr. Sam. Pelton's and he let him have a hundred dollars for it.

Q. What have you been engaged in here and at what salary?

A. I have not been doing anything since last summer; I could not get anything to do. My brother-in-law from Kansas City came here and I told him I could not do anything to support my family, and he got me some little jewelry from Little's jewelry house and I went peddling it.

Q. And what are you doing now?

A. Clerking. I got a job at Amter's to work and gave up peddling and I delivered the balance of the goods which I had to Mr. Little and here is the credit bill which I got for the goods that I delivered to Mr. Little.

Received, hereto attached, and marked Exhibit "A."

Q. What salary are you receiving?

A. Seventy-five dollars a month. This is the credit bill which I received back for the jewelry at Little's. That is the way I supported myself till my wife came down here and we opened a boarding-house here. The first two months we had very poor success; we couldn't get anybody to come to stay with us; we were in very bad shape.

329 Q. Now, Mr. Rich, Rudolph Ney in his examination testified that he turned over to you between seven and eight hundred dollars after you gave the mortgage to May & Hirsch.

A. He did not turn any such money over to me. The money which was turned over to me was given to me by Mr. Hirsch, three hundred dollars once, the first time, because I had money over there, and Turner raised hell, and he says, "Here is the money; you had better take it and make them hush up, and tell them you will give them the balance after awhile." The balance Rudolph Ney gave me, and it was $467.00, in Schultz and Davis' saloon. That was after the sale of the stock. I did not have any money. They had that money in their possession.

Q. Mr. May in his examination testified that you at one time had a lot of jewelry that belonged to your first wife. State whether you owned this jewelry at the time this mortgage was given to May & Hirsch.

A. I did not own any jewelry. May sold that same jewelry. He loaned me seven hundred dollars on it once before I was married to this present wife. I had it in a bank and could not meet it, and he gave me the money to take it out, and I took it out and gave to him. My present wife had seven hundred dollars a year lying there, and he says to me, "Rich, this is my present wife; has got seven hundred dollars, and she might just as well give it to you and you give her that jewelry." I came down to my present wife—I was not married then—and she says, "Sam., I have got that money

with Dave;" and I said, "Dave let you have it?" I did not know it was hers, and "Dave May," she says, "brought me down this box here," and she opened it before me, and it was that jewelry
330 which I had delivered to Dave May that time, and this jewelry she had before I married her, for that seven hundred dollars, that was her jewelry.

Mr. Rich was not cross-examined.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me this 28th day of May, 1888.

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

331 EXHIBIT A.

Salesman, —— ——.

DENVER, *April* 30, 1888.

M-. Samuel Rich, city, to C. W. Little, Dr., wholesale jeweller and importer.

Exhibit "A," A. W. B.
Terms, —.
Credit bill.

As an inducement for prompt payment a discount of 10 per cent. will be allowed for cash, or five per cent. if paid within 60 days.

	55	112	65	50	70	90	
28 prs. cuff butt's	872	3462	977	2544	3117	3192	4 42
	125	20	60	35	50	50	
	089	447m	4548	612m	2858	2869	3 40
	50	50	70	75	50	50	
	2683	2776	4527	2459	2448	2880	3 45
	113	35	20	42	50	50	
	3462	612m	447	712m	4592	2873	3 10
	50	17	75	13			
	4590	417	112	367			1 55
	167	329	45	400	45	67	
32 lace pins	022	582	752	4512	752	022	7 44
	85	56	125	79	34	255	
	3112	772	337	162	617	5172	11 38
	165	145	90	100	179	100	
	377	357	3192	312	157	3327	6 79
	79	50	66	79	90	50	
	157	812	012	162	3192	812	4 14
	112	113	56	90	91	180	
	3462	3462	887	3192	3212	5202	6 42
					90	129	
					3192	331	2 19
	45	52	15	18	10	15	
15 scarf pins	727	2837	387	432	332	395	1 55
	45	34	17	83	08	08	
	752	617	412	3112	312	312	1 95
	13	45	15				
	362	752	392				73
	35	56	45	35	34	108	
17 pair drops	617	887	752	617	617	1533	3 13
	85	26	90	50	45	203	
	2162	527	3192	812	752	415	4 99
	56	56	34	11	203		
	887	887	617	516	415		3 60

	108	52	53	18	30	22	
7 bib pins	3412	2876	178	437	212	146	2 83
						54	54
						157	
3 gold studs			335		1	25	3 75
	125	270	105	235	120		
5 hair ornaments	3612	115	118	117	114		8 55
	130	184	235	344	220	170	
21 gold set rings	342	396	447	556	422	382	12 83
	184	235	148	184	184	165	
	396	447	350	396	396	267	10 90
	148	328	155	148	200	148	
	350	530	367	350	412	350	11 27
332				120	120	120	3 60
				Di.	di.	di.	
	95	75	58	70	100	120	
8 filled rings	3237	112	912	062	3312	3562	5 18
					71	94	
					072	3192	1 65
5 R. P. charms			"	c.	50		2 50
2 compass "					37		75
2 emblem "			375	425			
			587	637			8 00
1 topaz charm							75
			100	100	75		
3 animal "			3312	3312	112		2 75
	120	120	360	140	140	315	
½ doz. col. butt's, ea.	10	10	612	512	514	562	5 98
	315	175	250	75	100	105	
	362	512	890	97	312	263	5 10
	70	400	79	129	78	108	8 64
6 lace pins	057	n612	162	3662	193	3412	
⅓ doz. col. butt's			412			200	67
⅓ " "			312			100	33
⅙ " "			662	2		450	75
¼ " "			317			105	26
¼ " "			1130			315	78
¼ " "			1139			350	88
		188	338	360			
3 pair bracelets		390	540	572			8 86
½ doz. ladies' vest	285	325	162	365	345	345	
	497	537	374	577	557	557	18 29
	183	162	183	162	183	162	
	395	374	395	374	395	374	10 35
	300	245	120	140	245	285	
14 R. P. chains	512	457	332	112	457	497	13 35
	345	325	225	445	225	225	
	557	537	437	657	437	437	17 90
	325	450					
	537	662					7 75
							245 95
Less 20%							196 76
" 6%							11 81
							184 95

We have checked the goods over very carefully, and herewith render you credit for above amount on your account. Should you find anything you think not correct please report at once.

(Signed) C. W. LITTLE.

Exhibit "A."

(Indorsed:) In circuit court of United States. D. K. Tenney *et al. vs.* Samuel Rich *et al.* Morris Leopold *et al. vs.* Samuel Rich *et al.* Deposition of Samuel Rich.

333 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Andrew W. Brazee, duly appointed examiner in chancery by the circuit court of the United States for the district of Colorado, do hereby certify that on the several days mentioned in the proceedings and depositions annexed I was attended by the counsel and witness aforesaid, at my office, 1540 Champa street, Colorado. Samuel Rich was first duly sworn by me according to law, a witness in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel, and, by consent of the parties, by their several said solicitors, the examination and deposition of said witness was stenographically written down and afterwards typewritten; that such examination was had in the presence of the solicitors of the several parties hereto; that said depositions, after being completed and typewritten, was read over by the witness deposing the same in the presence of the counsel of the respective parties or such of them as chose to attend; that after said deposition had been read over by the witness making and deposing to the same and corrected by him, as appears opposite my initials, "A. W. B.," in the margin thereof, said depositions was signed and sworn to before me by said witnesses so making and signing the same.

I further certify that the foregoing is a true statement of all proceedings had before me in the matter of taking testimony herein, and that exhibits from A *was* introduced in evidence in said cause during the taking of said depositions and subpœnas for witnesses returned before me were not returned and marked before me.

334 *Witness' Fees.*

Samuel Rich, attended 2 days	$3 00

Examiner's Fees.

Two days @ $3.00	$6 00
29 fol's @ 20	5 80
Marking one exhibit	10
	$11 90
	20
	12 10

(Signed) ANDREW W. BRAZEE,
Master and Examiner in Chancery.

(Indorsed:) 2149. U. S. circuit court. Daniel K. Tenney *et al. vs.* Samuel Rich *et al.* Testimony for complainant in rebuttal. Deposition of Samuel Rich. Filed June 6, 1888. William A. Willard, clerk.

335 And afterwards and on, to wit, the 7th day of June, 1888, came Andrew W. Brazee, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of testimony on behalf of complainant, and the said report is in words and figures as follows, to wit:

Examiner's Report—Testimony Behalf Complainant.

EXHIBIT A., A. W. B.

In the Circuit Court of the United States, Sitting at Denver.

DANIEL K. TENNEY *et al.* Complainant-,
vs.
SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH, Defendants. } 2149. In Equity.

You will please take notice that the above-named complainant desires the evidence to be adduced in said case to be taken orally under the sixty-seventh rule in equity of the Supreme Court as amended & pursuant to order of court; you will further take notice that by an order made in said cause by Andrew W. Brazee, master and general examiner in chancery of said court, a copy of which is hereto annexed and herewith served on you, the examination of witnesses on the part of said complainant will take place before said master and examiner, at his office, 1540 Champa street, Denver, Colorado, on the thirty-first day of March, 1888, and proceed as the said master may direct, adjourning from time to time if necessary.

336 (Signed) R. D. THOMPSON,
HENRY C. TENNEY,
Solicitor- for Complainant.

To Charles I. Thompson and T. D. W. Yonley, solicitors for defendants.

Ordered that the testimony of witnesses for complainant in foregoing cause mentioned may be taken before me, at my office, 1540 Champa street, Denver, Colorado, on the 31st day of March, 1888, at ten o'clock a. m.; such examination to proceed until completed unless adjourned for cause.

It is further ordered that solicitors for defendants have five days' notice of said examination.

(Signed) ANDREW W. BRAZEE,
Master in Chancery.

(Indorsed:) Circuit court of the district of Colorado. Daniel K. Tenney *et al. vs.* Samuel Rich *et al.* Notice and order to take testimony before master. Henry C. Tenney, solicitor for complainant.

Caption.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

Be it remembered that on the 31st day of March, in the year of our Lord one thousand eight hundred and eighty-eight, in pursuance of an order of court made and entered March 21,
337 1888, and my notice, order, and proof of service thereof hereto prefixed and marked Exhibit "A," the party to the cause therein and herein also mentioned appeared before me, Andrew W. Brazee, an examiner in chancery of the circuit court of the United States for the district of Colorado, at my office, 1540 Champa street, Denver, Colorado, to wit:

The complainant- in said cause, by R. D. Thompson, Esq., their solicitor, and the defendants by C. I. Thompson, Esq., their solicitor. And on this day and on succeeding days in which the taking of evidence herein was successfully adjourned, as hereinafter stated, or on some such days, came before me also Samuel Rich, of the apparent age — forty-three years, to testify and the truth to say as witnesses on the part and behalf of the complainants in certain suits and matters of controversy pending and undetermined in the circuit court of the United States for the district of Colorado, at the city of Denver, in said district, wherein in one of said suits Daniel K. Tenney is complainant and Samuel Rich *et al.* are defendants, and in the other of said suits Morris S. Leopold is complainant and Samuel Rich *et al.* are defendants.

And the said witnesses, having by me been first duly cautioned and sworn according to law to testify the truth, the whole truth, and nothing but the truth in the suits and matters of controversy aforesaid, was examined before me on oral interrogatories propounded to him by counsel, as in their several depositions following appears—that is to say:

On April 10, 1888, the parties appeared, the complainant by R. D. Thompson, solicitor for the complainant, and C. I. Thomp-
338 son for the defendants, whereupon the following proceedings were had:

Deposition of SAMUEL RICH, a witness produced on behalf of complainants, and duly sworn according to law, in answer to oral interrogatories propounded by counsel testified as follows:

Q. What is your name, age, place of residence, and occupation?

A. Samuel Rich; age, 43; Denver, Colorado; am a clerk.

Q. Are you the Samuel Rich who is one of the defendants in these causes and who executed, on or about March 24th, 1887, a mortgage of all your stock at Leadville, Colorado, to the defendants May & Hirsch?

A. Yes, sir.

Q. What property was included in said mortgage and what property, if any, did you have at that time which was not included in the said mortgage?

A. Everything that I possessed was included in the mortgage at that time; I did not have any property, money, or anything that was not included in the mortgage.

Adjourned to April 11, at 1.30 p. m.

April 11, 1888, complainant appeared by R. D. Thompson and defendants by C. I. Thompson, whereupon this cause is adjourned to the 13th instant, at 2 o'clock p. m. April 13 parties appeared as on the 11th, defendants waived cross-examination, and evidence-in-chief on part of complainants closed.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me the 13th day of April, A. D. 1888.

(Signed) ANDREW W. BRAZEE,
Examiner in Chancery.

339 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Andrew W. Brazee, duly appointed master in chancery by the circuit court of the United States for the district of Colorado, do hereby certify that on the several days mentioned in the proceedings and depositions annexed I was attended by the counsel and witness aforesaid at my office, 1540 Champa street, Denver, Colorado. The said witness, to wit, Samuel Rich, was first duly sworn by me according to law as a witnesses in the suits or causes in the caption hereto mentioned and there examined before me orally by counsel. The examination and deposition of said witness — written down by me; that such examination was had in the presence of the solicitors of the several parties hereto; that said deposition, after being completed and written, was read over by me to the witness deposing — the same in the presence of the counsel of the respective parties or such of them as chose to attend; that after said deposition had been read over to the witness making and deposing to the same and corrected by him, as appears opposite my initials, "A. W. B.," in the margin thereof, said deposition was signed and sworn to before me by said witnesses so making and signing the same.

I further certify that the foregoing is a true statement of all the proceedings had before me in the matter of taking testimony herein pursuant to said notice. Exhibit A and subpœna for witnesses returned before me are herewith returned and marked "Schedule."

(Signed) ANDREW W. BRAZEE,
Master in Chancery.

340 *Witness Fees.*

Samuel Rich attended 3 days ---------- $4 50

Master's Fees.

Oaths administered, 2 @ 20 cts.	20
Folios, 12 @ 20 cts.	2 40
3 days @ $3.00	9 00
Making one exhibit @ 10 cts.	10
	$11 70

(Signed) A. W. BRAZEE,
Master and Examiner in Chancery.

(Indorsed:) No. 2149. Daniel K. Tenney *vs.* Samuel Rich *et al.* Evidence-in-chief for complainant under order March 21, 1888. Filed June 7, 1888. William A. Willard, clerk.

341 And afterwards and on the same day, to wit, the 7th day of June, A. D. 1888, there was filed in said court and in said cause the depositions of B. F. Stickley and O. P. Bassett on behalf of the complainant; and the said depositions are in words and figures as follows, to wit:

Depositions of Stickley et al. — Behalf Complainant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States, Sitting within and for the District of Colorado.

DANIEL K. TENNEY *et al.*
vs.
SAMUEL RICH *et al.*

STATE OF COLORADO, *County of Lake,* } *ss:*

Depositions of Benjamin F. Stickley and O. P. Bassett, witnesses on the part of the plaintiff, taken at Leadville, Colorado, on the 31st day of May, A. D. 1888, before Chas. A. Hinckley, a notary public in and for said county and State, pursuant to stipulations heretofore made in said cause.

BENJAMIN F. STICKLEY, a witness produced, sworn, and examined on the part of the plaintiffs, testified:

Q. State your name, age, residence, and occupation.

A. Benjamin F. Stickley; 45 years of age; Leadville, Col-
342 orado; insurance and real estate.

Q. State whether you are acquainted with the plaintiffs and defendants in this case.

A. I don't know the plaintiffs; I know the defendants.

Q. State how long you have been in Leadville.

A. Over nine years.

Q. State whether you have dealt in real estate since you have been here and are acquainted with the values of property in this town.

A. I have dealt more or less in real estate for the last seven years.

Q. Is it a part of your business the loaning of money on real estate and the buying and selling of the same?

A. Yes, sir.

Q. State whether you are acquainted with lots five and six, in block fifty-one, of Stevens' and Leiter's addition, formerly occupied by Samuel Rich, on West 7th street, Leadville, Colorado.

A. I am.

Q. You may state whether you were acquainted with such property along in March or April, 1887.

A. Yes, sir.

Q. Whether you examined it at any time.

A. I have been in the place several times.

Q. Now you may state what, in your opinion, was the value of that property.

A. I think about two thousand dollars would have been a fair valuation of the property at that time.

Q. State whether it was ever placed in your hands to sell, and at what time.

A. It was placed in our firm, and I believe the first price was twenty-five hundred dollars, although he kept coming down in the price until he reached two thousand dollars.

343 Q. Did you make any sale at that price?

A. I did not.

Q. State whether you made any sale of the property at any price.

A. I did not make any sale.

Q. Do you know in whose hands the property was placed afterwards?

A. O. P. Bassett's.

(Signed) BENJAMIN F. STICKLEY.

Subscribed and sworn to before me this first day of June, A. D. 1888.

(Signed) CHAS. A. HINCKLEY,
Notary Public.

O. P. BASSETT, a witness produced, sworn, and examined on the part of the plaintiffs, testified:

Q. State your name, age, residence, and occupation.

A. O. P. Bassett; Leadville, Lake county; occupation, real estate.

Q. Do you know the plaintiffs and defendants in this cause?

A. No; I don't know the plaintiffs; I know the defendants.

Q. State how long you have been in Leadville and how long engaged in the real-estate business.

A. I have been here eight years and in the real-estate business four.

Q. State whether you are acquainted with the location and value

of lots five and six, in block fifty-one, formerly occupied by Samuel Rich.

A. Yes, sir; I think so; I have a very good idea of its value.

Q. State what, in your opinion, was the value of the place in March or April, 1887.

A. Well, I would put it from twelve to fifteen hundred dollars, just as you find a man who wanted to buy.

Q. State whether the property was in your hands about
344 that time for sale and at what price.

A. Yes, sir; it was in my hands for sale. I think it was given me to sell for sixteen hundred dollars, and we got an offer for thirteen hundred and fifty, if I recollect right, which we proposed to take, but the party wouldn't take the price.

Q. Did you consider that offer of thirteen hundred and fifty dollars a fair, equitable price for that property?

A. Yes, sir; I thought so at the time.

Q. State whether you ever made any sale of the property at any price.

A. Well, the property was sold to Mrs. Samuel Rich. I might say that Judge Goddard issued an order for them to borrow on the property, and I thought perhaps he hadn't the right to order that and consulted him, and he said he guessed he had exceeded his authority and issued an order to sell. I wouldn't loan on the property, and they went and borrowed through Stickley. Then they got an order from Judge Goddard to sell, and the property was sold to Mrs. Samuel Rich. I then made a loan through Polkinghorn of eleven hundred dollars on it.

Q. State, of you know, what the property was sold for.

A. I can't say; the deed will show; I don't recollect; but I made a loan of eleven hundred dollars through Polkinghorn on the property.

Cross-examination:

Q. Isn't it true that the title to that property was merely transferred to Mrs. Sam. Rich so as to enable her to make a loan for the benefit of Sam. Rich?

A. Well, that I can't say.

Q. Who sold the property to Mrs. Rich?

A. I think I made out the deed to it.

345 Q. Don't you know as a matter of fact that there was no consideration paid by Mrs. Rich for the property?

A. No; I can't say that. I made the loan for the property after it was sold.

Q. At whose request did you make the deed to Mrs. Rich?

A. Why, Mr. Rich.

Q. Sam. Rich?

A. Yes, sir; they wanted to get some money on the property and, as I said before, Judge Goddard issued an order for them to borrow and he afterwards decided he did not have the authority and gave an order to sell the property.

Q. Sam. Rich was the guardian of these children and executed the deed as guardian, didn't he?

A. I think some time long prior to this, I don't know how long, but Rich deeded one-half of the property to the children, the one-half he held through the mother and the other half fell to the children.

Q. Then he got an order from the district court to borrow and, subsequently finding that order was erroneous, he got an order to sell?

A. Yes, sir.

Q. And then he sold to his wife?

A. Yes, sir.

Q. But you don't know of any consideration paid by his wife?

A. That I don't know.

Q. Who was the money borrowed from by his wife?

A. Polkinghorn, through me.

Q. Did he get the money that was borrowed? Who did you pay the money over to?

A. I am of the opinion, without looking, that I sent a check to Denver to his wife.

Q. You don't say that positively?

A. No, sir; without looking at my check book.

Q. Do you know B. F. Stickley, the man who testified awhile ago?

A. I don't know of his testifying, but I am acquainted with him.

346 Q. In the real-estate business?

A. No, insurance.

Q. What would you say as to whether his judgment was good or bad as to the value of real estate in this town?

A. Well, he ought to have a pretty good idea. His business is real estate and insurance.

Q. How much money did you loan on the property when you did loan?

A. Eleven hundred dollars.

(Signed) O. P. BASSETT.

Subscribed and sworn to before me this 1st day of June, A. D. 1888.

[SEAL.] (Signed) CHAS. A. HINCKLEY,
Notary Public.

STATE OF COLORADO, } ss:
County of Lake, }

I, Charles A. Hinckley, a notary public in and for the county and State aforesaid, the commissioner duly selected and appointed to take depositions in the above and foregoing cause of action, do hereby certify that previous to the taking of the deposition of the said Stickley and the said Bassett each of said witness- were duly sworn by me to testify the truth in relation to the matters and things in controversy between the said plaintiff and defendant so far as they should — interrogated concerning the same; that said

depositions were taken by me in short-hand and by me extended on the typewriter, and that thereupon the said witnesses subscribed and swore to the same, the oath being administered by me at the city of Leadville, county and State aforesaid.

Fees, $6.70, paid by plaintiffs.

347 Witness my hand and notarial seal this last day of June, A. D. 1888.

(Signed) CHAS. A. HINCKLEY,

[NOTARIAL SEAL.] *Notary Public.*

[Endorsed:] 2149. D. K. Tenney *et al. vs.* Samuel Rich *et al.* Depositions of B. F. Stickley & O. P. Bassett for pl'ts. Filed Jun-7, 1888. William A. Willard, clerk. Fees, $6.70, paid to plaintiffs.

And afterwards and on, to wit, the 30th day of August, A. D. 1888, at chambers, before the Honorable Moses Hallett, district judge, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Creditors to Prorate. Referred to Master.

DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. In Chancery. Creditors' Bill for Relief.

This cause coming on to be heard upon the bill of complaint herein, the answer thereto, and the replication of the complainants to such answer, and the proofs taken in such action, and having been argued by counsel for the respective parties, *and* the court, having duly considered the same, doth find that the transfer of the property on the 24th day of March, A. D. 1887, from the said

348 Rich to the said May & Hirsch was a general assignment by said Rich of all or substantially all of his property, and that the creditors of said Rich at the date of said transfer are entitled to their *pro rate* share of the said property so transferred.

It is therefore ordered that creditors of the said Rich at the date of said transfer who are not now parties to this proceeding may become parties herein and receive their *pro rate* share of the property so transferred; that this cause be referred to John W. Webster, a master of this court, at Denver, Colorado, to examine such witnesses as shall be produced before him, and also to examine such others testimony as shall be taken under this order, as hereinbefore provided for, concerning the value of said property transferred as aforesaid and as to the amounts of the several demands of the complainants and of the said May & Hirsch and of such other creditors as may seek to become parties hereto; also asto the actions brought by other creditors of said Rich against said Rich in Lake county, Colorado, and pending at the time of the filing of complainants' bill herein, the parties to such actions, the amounts involved, and the proceedings had thereon, and report the same, together with his conclu-

sions, to this court; that the parties hereto may take the testimony of such witnesses as they desire before Robert H. Buck, a master of this court, at Leadville, Colorado, who is hereby directed to take and report the same to the court with all convenient speed.

It is further ordered that the depositions of witnesses residing out of the State may be taken under the rules of this court relating to depositions, and that the parties hereto are at liberty to apply to this court at any time for further directions.

349 And afterwards and on, to wit, the 5th day of October, A. D. 1888, there was filed in said court and in said cause a certain stipulation as to evidence taken in No. 2130, L. Lowenstein *vs.* David May and Adolph Hirsch; and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Evidence.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court of the United States for the District of Colorado.

DANIEL K. TENNEY *et al.* *vs.* SAMUEL RICH *et al.* } Stipulation.

MAURICE L. LEOPOLD *et al.* *vs.* SAMUEL RICH *et al.* } Stipulation.

It is hereby stipulated by and between the parties hereto that the depositions and testimony taken in the above-entitled actions, also the testimony taken in two certain case- of Lowenstein *et al. vs.* David May and Adolph Hirsch in the certain action of replevin in said circuit court, may be read, used, and considered in evidence before John W. Webster, a master of this court, on the ques-
350 tion of the value of the property received by said May & Hirsch under the conveyance of March 24th, 1887, and upon any other questions arising under the order made and entered in the above-entitled actions by said circuit court on, to wit, the 30th day of August, A. D. 1888, or upon the final hearing of the causes.

It is further stipulated and agreed that the amount of the judgment in the said suit of Lowenstein *et al. vs.* May and Hirsch be accredited to the said May a-d Hirsch in the taking of the accounting ordered by the court herein.

It is further stipulated that the amounts set forth in the respective complaints filed in the above-entitled actions are hereby admitted to be true and correct, and that the said conveyance from the said Rich to the said May and Hirsch of date of March 24th, 1887, cor-

rectly sets forth the amount at that time owing to the said May and Hirsch by the said Rich.

(Signed) R. D. THOMPSON,
Att'y for Complainants.

(Signed) A. T. GUNNELL,
Att'y for May & Hirsch.

(Indorsed:) 2149. Circuit court U. S. Daniel K. Tenney *vs.* Samuel Rich *et al.* Stipulation as to testimony, &c. Filed Oct. 5, 1888. William A. Willard, clerk. R. D. Thompson, for plaintiff.

And the evidence of Samuel Rich, heretofore and on, to wit, the 7th day of October, —. D. 1887, opened, published, and filed in said court and in a certain cause in said court then pending, wherein L. Lowenstein, doing business under the firm name and style
351 of L. Lowenstein & Co., was plaintiff and David May and Adolph Hirsch were defendants, and referred to in the stipulation filed Oct. 5th, 1888, in said court and in said cause, is in words and figures as follows, to wit:

Evidence of Samuel Rich.

(NOTE BY CLERK).—The caption, certificate, stipulation, and notice attached to and under which this evidence of Samuel Rich *were* taken will be found on original page 234 and following pages of this transcript, with the evidence of Jacob Rich.

Deposition of Sam. Rich, a witness produced, sworn, and examined on the part and behalf of the plaintiff aforesaid, in the manner aforesaid, in answer to interrogatories.

Q. What is you- name, age, place of residence, and occupation?
A. Sam. Rich; 41; Leadville, Colorado; merchant—have been.
Q. What are your plans in reference to leaving Colorado, Mr. Rich?
A. The plan was that I had to leave Colorado. I could not stay here. I was robbed out of everything.
Q. Where did you expect to go?
A. I will have to go somewhere to make a living—in Denver or womewhere else, I do not know.
Q. You have thought some of going to Mexico?
A. Down to New Mexico.
Q. Are you acquainted with the defendant David May?
A. Yes, sir.
Q. Adolph Hirsch?
A. Yes, sir.
Q. How long have you known them?
A. Since last spring. I have known them for many years, but never had business with them until last spring.
352 Q. Do you know the plaintiff, L. Lowenstein?
A. Yes, sir.
Q. Have you ever had any business with Mr. Lowenstein?

A. I have bought one bill of goods of him.
Q. You have bought one bill?
A. This was the first I bought, this spring.
Q. When did you buy the bill of goods you are talking of?
A. In February, 1887.
Q. Will you look at this statement of account (handing witness a paper) and say if it contains a list of the goods that you bought of Lowenstein this spring?
A. Yes, sir.
Q. Does it give the prices at which the goods were bought?
A. I think it does. I have had no chance to see the goods since I came home. They were after me that day to close me up, and I had no chance to look around the store. I know I bought a bill of goods of Lowenstein, and that I bought that amount.

Said bill is offered and read in evidence, marked 1, and hereto annexed.

Q. Have those goods mentioned and described in that bill marked 1 been paid for?
A. No, sir.
Q. Where are the goods now?
A. Well, they were in my store when they came, but are in possession of Joe Shamburg.
Q. To whose possession did you transfer them?
A. To David May and Adolph Hirsch.
Q. When did you transfer them?
A. On the 24th day of March, 1887.
Q. How long had they remained in their possession, if you know?
A. Eight days, I believe. I do not remember when they made the sale.
Q. Were they in possession of Mr. May and Mr. Hirsch on the 13th day of March?
A. Yes, sir.
353 Q. About what day was it, you think, they sold or transferred them to Shamburg?
A. I do not remember whether it was the 8th or not; some time in April. They advertised the sale after they had run the store two days. Then they closed the store up and Dave May made the remark that he did not like to keep the store open to hurt his business; so they closed the store and sold the stock in bulk. The arrangement had been to keep that store open and to put me back in three days.
Q. You know the goods that you received?
A. I was not at home when the goods came in.
Q. When did they come, about?
A. I cannot tell. I was not home. I came home on the 24th of March, Thursday morning, and they did not give me any show to look over the goods.
Q. How long were you East?
A. About six weeks.
Q. When did you buy these goods?

A. Between the 18th and 21st of February. It was on Sunday morning, either the 20th or 21st.

Q. Now, state, Mr. Rich, under what arrangements or by what plans you went to Chicago to get these goods from the plaintiff and other goods that you bought.

A. The arrangement was between David May, Adolph Hirsch, and myself to go and buy these goods; to buy such a quantity of goods as I could, and, when I would come home, Dave May would take part of the goods for his pay, and I would effect a settlement with my creditors at 25 cents on the dollar or whatever I could.

Q. When you bought these goods, then, Mr. Rich, had you any intention of paying for them?

A. Well, I thought I will pay for them, if I can. If they will let me go on and stick to me, as they promised to do, I would
354 pay for them. If not, I could not, and *and* I did not get the quantity of goods which they expected me to get.

Q. Did you tell Mr. Lowenstein when you bought the goods that you intended to sell them to May and Hirsch as soon as you got back?

A. No, sir.

Q. How much were you owing May and Hirsch at the time?

A. Dave May was on my papers in the Carbonate bank. I think there was $12,500 between us. Then there was a note in the Carbonate bank of $6,200 of my own papers. It was Ed. Nathan, Nathaniel Nathan, and myself, which I supposed they bought up from the bank.

Q. Now, state fully what you intended to do with these goods when you came back with them.

A. I intended to sell them.

Q. To whom?

A. To whoever would buy them. They did not let me alone. They would not give me any show. The first day they were after me because I did not bring goods enough. They were afraid I could not pay their indebtedness from the stock of goods.

Q. Did they know at the time they took these goods of you that they were not paid for?

A. Yes, sir.

Q. You say that you did not bring home as many goods as they wanted you. How many did they want you to get?

A. They calculated before I went East that I would be able to buy between 30 and $35,000 worth, but the calculation would not work out. I could not get any more than I did.

Q. What were you to do with this $35,000 worth of goods?

A. I was to bring them home, and if I could not store them in my store, which I could not, to put part of them in Hirsch's warehouse at the depot and part in my store, and scratch my name
355 off the boxes and put Dave May's name on them and take them to Dave May's store.

Q. Now you state that there was talk about them getting a 25-cent settlement before you started to Chicago for the goods?

A. Well, that was talked about last June.

Q. With whom was that with?

A. Hirsch and May.

Q. What was the substance of the conversation?

A. They told me they had looked into my affairs and saw that I was insolvent and could not pay up, and I told them I wanted to go East to get an extension and work this matter through. They advised me to make a settlement right there. I said I thought I could get an extension. Mr. Ed. Nathan went East and got this extension of from four months to two years.

Q. Now state what talks after that you had with them.

A. After I got an extension I paid up as fast as I could. Whenever I got short of money I went to Hirsch or Dave May and they endorsed for me in the bank for whatever money I needed.

Q. When you went East this last time did you go at the suggestion of May and Hirsch?

A. Yes, sir.

Q. When did they suggest of your going East, and what did they say?

A. It was in the last of January; they wanted me to go East in December, but Dave May made the remark that a man in my standing ought not to go in December to buy goods, because in December only merchants go East to buy goods who are in good standing and pay cash. So they suggested that I go in February, about the 15th.

Q. Before you went East, did you send over some of your goods to Dave May?

A. Yes; Sunday afternoon. Dave May came over to my store and told me that I had too many goods in my store and
356 that when the travelling men saw the big stock of goods they would not sell me anything, so one Sunday afternoon Dave came into the store and picked out a lot of goods and in the evening he came there with an expressman and a sled and took the goods over to his store.

Q. What time in the evening?

A. Between 7 and 8 o'clock.

Q. Was it dark?

A. Yes, sir; it was in January.

Q. About what was the value of the goods?

A. I kept account; he told me not to book it, but just put it down on a piece of paper before the goods were taken out—my brother was in the store—and it came to about $1,366.

Q. Do you know if they were credited to you at all?

A. Yes; Dave May gave me about $666—I do not know exactly. I know he gave it to me in two payments; he gave me two checks.

Q. What did he do with the balance?

A. He said, The balance we will let go on that $2,500 note; I will credit you with it.

Q. Did he ever do it?

A. I do not know.

Q. You said there was some talk about getting a 25-cent settlement; with whom was that talk had?

A. We had it between us—myself and Dave May.
Q. Did Hirsch take part with those?
A. No; sometimes; he was most of the time with Dave.
Q. Now state what those talks were and how long before you went East.
A. It was a few days before I started East I had a talk with Dave. Dave sat down in his office and figured out with me how much to buy from each house so as not to buy too many goods from one house or they would get on to the racket; so he figured that
357 if I bought the amount of goods he figured out, then I could get a settlement of 25 cents and have so much left.
Q. How much did Dave May figure you were to get in all?
A. Somewhere in the neighborhood of $35,000.
Q. Then you never expected to pay dollar for dollar for them?
A. No; I expected they would let me go on.
Q. The plan was to make a settlement?
A. Yes, sir.
Q. The values of these goods that are placed on that bill are correct?
A. They are correct; yes, sir. I remember it was something in that neighborhood.
Q. State now, Mr. Rich, if you know how it was and when it was that Mr. May and Mr. Hirsch got possession of these goods mentioned in this suit.
A. When I came home on the 24th of March, on Thursday morning, I was not any more than down from my breakfast when the Carbonate bank sent for me. They wanted their money on their note. Afterwards Mr. Hirsch came in and told me that Duggan wanted his money, that the notes were due; so I says to him, What is there to be done? He says, Well, this evening we will come together in my store and see what we will do. We talked matters over between us and he went away, and Mr. Dave May came over with me and walked down into the back end of the office and says to me, "Well, Sam., you didn't succeed; you didn't get any of the goods that we figured on?" I says to him, I think there is enough goods to satisfy you. The store was full. I think if you are in a hurry I can telegraph to Leopold and get the money. He is a friend of mine, and once before let me have $3,500. He says you ought not to telegraph. He will smell a rat and come out here and close you up, and we
358 will be left. My brother walked into the store and saw me in conversation with Dave May and he walked away, and I thought he went outside; what he heard I don't know. Dave says to me, The best thing is to do something right away; Strauss, the San Francisco man, is coming up to-morrow. I said, Strauss is not coming up to see me; I don't owe him anything. I had bought a bill of him, but it had not commenced to run. He says that I ought to do something right away, and I says, "Give me a show." It would not look well to the merchants East for me to come right back and close up right away. They would see that it was a put-up job from the beginning. I have goods coming from St. Louis, and the people

there will say the store was closed before I bought them. He says, We will see to-night what we can do. I went around all day. I did not go to the store. I saw my brother and consulted with him. When evening came Mr. Hirsch comes to me in the store and takes me away with him. I did not know where he was taking me. We will consult what to do, he says, and he marched me up to Mr. Thompson's office, and there I found Mr. Thompson and Mr. Gunnell and Dave May and they made out some papers.

I called Hirsch and May into the private room and I says, Gentlemen, I am left penniless. So they said in two or three days they would put me back into the store and then I could make a settlement with the creditors for the balance of my debts. They said they would stay by me. I says, I went East and gave statements of my affairs in order to get goods and save your money and now you ought not to throw me out. So we went back into the office
359 and they telephoned to the typewriter to come and get the papers. I went down to the store and there was my brother and the clerk. All at once Mr. Hirsch, Mr. May, Mr. Thompson, and Mr. Gunnell walked in and demanded the keys of the store. The keys were delivered to them and they took possession of the store and walked out. We walked back to the office and waited there for the papers. We waited there about half an hour—until half past ten. I walked out of the office two or three times and did not know whether to sign them or not, but, under their promise that the stock would be returned to me so I could settle with my creditors, I signed the papers.

Q. Have any of these notes ever been returned to you?

A. I made a demand of Hirsch and he told me he would not give them up.

Q. Now, state if these men were to assist you in any way in getting a settlement.

A. Well, that is what they promised to do. Last June, even Dave May volunteered to go East and make a settlement for me.

Q. When this last deal was made was there any talk then about their making a settlement?

A. No; they said they would see me through, and of course that meant making a settlement.

Q. Were you acquainted with the value of the stock in your store?

A. Yes, sir; I ought to be. I did not take stock in the spring.

Q. What was the value of the stock you turned over?

A. From forty to forty-five thousand dollars. They took up the stock to suit themselves.

Q. Mr. Rich, what was the arrangement as to what should be done with the money that was taken in your store while you were East?

A. I had a note in the bank. Mr. Dave May and myself went to the bank and I got fifteen hundred dollars on a note he en-
360 dorsed. I took Mr. Hirsch's book-keeper there and told him to take the receipts every night, and to pay them to the bank to go on that note, and he give a receipt to my clerk every night

for the amount of money they took away. They put in the bank $396.00 on this note. Mr. Dave May and I went into the bank and told the president that the receipts were to go on that note and not to my deposit.

Q. Do you know if that was done?

A. No; there was only $396.00 paid on that note.

Q. Do you know how much was taken in?

A. Yes, sir.

Q. How much?

A. $1,443.75.

Q. What was done with the balance?

A. They kept it at Hirsch's.

Q. Do you know if you ever had any credit for that?

A. No, sir; only $396.00 on that note; that money was kept there and Mr. Rudolph Ney told me that he was advised by Dave May or Mr. Hirsch not to deposit any more money; that he had better keep that money for me.

Cross-examination by Mr. THOMSON:

Q. Mr. Rich, you bought the bill of goods specified in Exhibit 1, did you, from the plaintiff Mr. Lowenstein?

A. Yes, sir.

Q. And he sold those goods to you?

A. He did.

Q. Did he deliver them to you?

A. He did.

Q. Where?

A. At Leadville.

Q. Did you ever see the goods after they were delivered?

A. I saw some of them; yes, sir.

Q. How many of them did you see?

A. I do not remember how many.

Q. What articles did you see?

A. I saw some suits.

361 Q. Which kind of suits?

A. I do not remember which kind; I cannot tell, but I know the goods were delivered.

Q. How many suits did you see?

A. I do not remember.

Q. Were you there when the goods came in?

A. No, sir.

Q. You cannot remember how many you saw?

A. No, sir.

Q. Can't you approximate?

A. No; I did not have much time to see anything.

Q. You have no recollection of how much you saw?

A. No, sir.

Q. Did you ever see any of them after that?

A. I have not been in the store.

Q. Then what you did see, you only saw that once?

A. Yes, sir.

Q. When you went East, Mr. Rich, the 13th of February, where did you go?

A. Kansas City first, and then to New York.

Q. Did you go any further?

A. Yes, sir; I went to Montreal to see my child, and from there to New York.

Q. Did you go to New York for the purpose of purchasing goods?

A. Yes.

Q. Did you make any purchases?

A. Yes; but they did not ship the goods.

Q. Now, you say you made an arrangement with May and Hirsch to go and buy these goods?

A. Yes, sir.

Q. When was that?

A. This arrangement was made with Dave May about the time I went East.

Q. Who was that arrangement made with?

A. With Dave May mostly and with Hirsch.

Q. Where did you and Dave May first talk about it?

A. We had been talking about it all along.

Q. When and where was the first talk about it?

A. In his store.

362 Q. About what time?

A. I do not remember what time it was; there was so many times we talked about it I cannot remember.

Q. Can you fix some time near the time?

A. We had been talking about it before I left.

Q. I mean the first talk?

A. I cannot remember.

Q. It was in his store?

A. Yes, sir.

Q. What was said the first talk?

A. It was said that I should get the goods and then sell them.

Q. What did you say to him that brought that up?

A. I said I was hard up and needed money.

Q. Did you say anything to him about it—about getting the goods?

A. We was talking about business. He said I could not pull through; that I would have to have more goods and settle my affairs with the creditors.

Q. How did he know you could not pull through?

A. He knew my affairs as well as I did myself, and better, too.

Q. Had you told him?

A. Yes, sir.

Q. The first talk was between you and him at his store?

A. Yes, sir.

Q. Was Hirsch present?

A. He was not.

Q. When did you next talk with him about it?

A. I do not remember; we talked about it all the time.

Q. Was Hirsch present?

A. No; he was not.
Q. Was Mr. Hirsch present at any time?
A. At one time.
Q. What time?
A. In the hotel Sunday night, in the beginning of December.
Q. What was said then?
A. I had a note coming due for twenty-five hundred dollars and could not meet it--a note which Dave May had endorsed—and I went up to see him Sunday—he boarded at a hotel—and
363 asked him if he could not extend that note. We got to talking in the parlor, the three of us. Mr. Hirsch even made the remark that I go East in December, and Dave May said that a broken-down merchant like myself could not go East and get goods in December because only those merchants go in December who can pay cash for what I get and it was to be put off until February.
Q. Was there anything said in Mr. Hirsch's hearing about that settlement?
A. Yes; it was said that I should get the goods and settle up.
Q. Was that the only time that you had any talk with Mr. Hirsch?
A. No; sometimes he was present; at other times——
Q. How often was he present?
A. I cannot tell. I did not keep any notice of it.
Q. What was said about that at any other time when Hirsch was present?
A. Only that I go East and get the goods and pay them and make a settlement with my creditors and keep what was left.
Q. Who said that?
A. It was said between us. It was arranged between us.
Q. Well, now, you recollect distinctly that conversation in the hotel, don't you?
A. Yes, sir.
Q. That was between you and Dave May and Hirsch?
A. Yes, sir.
Q. What did Hirsch say at that conversation?
A. He did not say anything more than the rest of us.
Q. Do you remember anything he said?
A. We was all talking about how the matter could be arranged. He said I should go East about that time, but Dave objected.
Q. You had a note to pay next day?
A. On the 4th of December.
Q. Well, what did you call that meeting for, Mr. Rich?
364 A. To get money to pay that note.
Q. Did you get the money?
A. I did.
Q. How did you get it?
A. They endorsed for me in the bank.
Q. Was there anything said at any time as to how you should settle with your creditors?
A. It was all arranged that I should go East and get goods.
Q. Did Hirsch ever say anything as to how you should settle?

A. He said as much as anybody.
Q. When did he say it?
A. I did not keep any account of that.
Q. Now, you had a talk about it last June?
A. Yes, sir.
Q. Who with?
A. With Hirsch and with Dave.
Q. What did you talk about?
A. I talked about getting an extension.
Q. Were they on your notes at that time?
A. They were not.
Q. And the talk was that you were to go East and get an extension, so that you could pull through.
A. Yes, sir.
Q. And you were simply asking their advice about that as friends in June?
A. Yes, sir.
Q. And the object was that you should get an extension, so you could pull through?
A. Yes, sir.
Q. Now, when you bought these goods of Lowenstein you thought you might be able to pay for them, didn't you?
A. I thought if they would stay by me and see me through, I might.
Q. You had no intention of swindling them out of these goods when you bought them?
A. No, sir; I intended to do the best I could for them.
Q. And really you intended to pay for them?
A. Yes, sir; if I could pull through.
Q. You had no idea at that time of going into any scheme
365 whereby he would not get his pay?
A. I knew I was in a scheme because it was planned before I went away.
Q. Where?
A. In Leadville.
Q. When?
A. I don't know exactly when; before I left.
Q. How long before you left?
A. It was from December to the time I left.
Q. What were the words that they used when they were planning that scheme?
A. Nothing; only that I was to try and get all the goods I can.
Q. All they said was that you should get all the goods you could?
A. Yes, sir.
Q. When you bought these goods of Lowenstein had you any real intention of swindling him out of those goods?
A. No, sir; because I figured on them to stay by me.
Q. You had reason to believe they would?
A. Yes, sir.
Q. And help you to pull through so you could pay your debts?
A. No; I did not get enough goods for them.

Q. But still from their talk you had reason to believe they would stay by you so you could pay for those goods?

A. Yes, sir.

Q. Now, Mr. Rich, in January Mr. May got some goods of you?

A. Yes.

Q. These are the goods you spoke of that were taken out between seven and eight o'clock in the evening?

A. Yes, sir.

Q. How did he come to buy those goods of you?

A. I went over to Dave and says I shall need a little money. He says you have a big stock of goods on hand, and I need some goods and I will take some over to my store from yours.

Q. Didn't you tell him you had a payment coming due next day?

A. Yes.

366 Q. Then he agreed to advance you money and take goods?

A. He did not advance me money; he took the goods first.

Q. He saw you through?

A. No, sir.

Q. What became of that money?

A. I used it to pay a note. He gave me a check for $250.00 and one for $350.00.

Q. That was on the same note that was coming due next day?

A. Yes.

Q. How much was he to give you next day?

A. We made no agreement; he was to allow me as much as the goods would cost him.

Q. What was the value of the goods?

A. $1,366.00—at my cost price.

Q. Well, how was he to pay you the balance?

A. He said he would put it on the twenty-five-hundred-dollar note.

Q. Did he?

A. I do not know.

Q. You do not know, then, whether the balance was endorsed on that twenty-five-hundred-dollar note?

A. I do not know.

Q. That was a fair sale, was it not?

A. He did not want me to put the items on the book.

Q. Did not want you to charge him up with it?

A. No, sir.

Q. He gave you so much cash?

A. Yes, sir.

Q. Agreeing to endorse the rest on that $2,500 note?

A. Yes, sir.

Q. Was that on Sunday?

A. Yes, sir.

Q. On a Sunday afternoon in January?

A. Yes, sir; January 9th.

Q. He only got goods of you once, did he?

A. That is all.

Q. You went over to his store and told him about this note that you had to meet?

A. Yes, sir.

Q. And it was there that you made the agreement about the goods?

A. He said, You have too much goods over there and I can use some.

367 Q. When you bought these goods you intended to bring them to Leadville and sell them in the usual course of business?

A. Yes, sir.

Q. And you had no reason to believe but what they would let you do it?

A. No, sir.

Q. Now, when you came back on the 24th of March, who did you see, Dave or Hirsch?

A. The first man I saw was Duggan, of the bank.

Q. What is his position?

A. President of the Carbonate bank.

Conversation between witness and Duggan objected to.

Q. How long before you went East was the last conversation that you had with May and Hirsch?

A. I had with Dave a conversation on Sunday, the same day I left.

Q. Was Hirsch there?

A. No, sir; I met him on the train coming from Aspen. I did not have any talk with him.

Q. When you came back they tackled you about this indebtedness to the bank?

A. Yes, sir.

Q. And they got you to give them a chattel mortgage on this stock to secure those notes on the bank?

A. Yes, sir.

Q. And they took possession under that mortgage?

A. I suppose so.

Q. You signed that mortgage, did you not?

A. Yes, sir.

Q. It was read to you before you signed it?

A. No, sir.

Q. Did you read it over?

A. No, sir; I took their word for it. I saw Dave May read it over.

Q. Were you present when the short-hand man took it down?

A. He did not take it down. He took the papers down to his office.

368 Q. Were you not there?

A. No, sir; when I came up there the first time I saw you writing some papers. I went into the private office with May and Hirsch.

Q. Were not you in my back office while the stenographer was there talking with Dave May?

A. Yes, sir.

Q. Didn't you come out into the front office and sit there until the stenographer got through?

A. I sat there awhile and went away.

Q. Were you not sitting there part of the time while the stenographer was taking this down?

A. Yes, sir; part of the time; I was there two or three times; they asked me two or three times where I was going; they seemed to be afraid I would go away.

Q. You say you had thirty-five or forty thousand dollars' worth of goods.

A. I had over forty thousand dollars' worth.

Q. How many new goods did you buy?

A. I do not know how much came in.

Q. When had you taken stock last?

A. When Nathan went out in the spring of 1886.

Q. And you do not know how many of those goods you bought came?

A. No; I cannot tell exactly. I know pretty nearly how much I bought, but I do not know whether they came.

Q. Had you been in the mercantile business straight along from the spring of 1886 until the time you went East?

A. Yes, sir.

Q. Did you keep account of your cash sales?

A. Yes, sir.

Q. Do you know how much they amounted to during that time?

A. I believe between twenty-six and twenty-seven thousand dollars. I do not remember the exact amount.

Q. When had you been East before that?

—. In August.

Q. After you dissolved with Nathan?

A. Yes, sir.

369 Q. When before that?

A. In the spring.

Q. What did that stock of goods consist of at the time you made the mortgage to May and Hirsch?

A. Clothing, furnishing goods, hats, and caps.

Q. Have you any idea, Mr. Rich, how many of the goods you purchased in February and March did come in these last purchases?

A. I have an idea; between fifteen and sixteen thousand dollars.

Q. How did you form that idea?

A. From the accounts that came in after I was shut up—from the suits that were brought against me.

Q. You did not go through the store?

A. I did not have any chance.

Q. You owed this debt at the bank?

A. I did.

Q. And they endorsed for it or a large part of it?

A. Yes, sir.

Q. That was just?

A. Yes, sir; I do not deny it.

Q. Did you do anything more than secure them for their debts?

A. Yes, sir; there was forty-five thousand dollars' worth of goods there, and they promised me that after they got their money that I could settle with my creditors. I can prove that there was that many goods there.

Q. You did not expect anything of the kind, that they were to close you out that way?

A. No; not that way.

Q. You expected they would let you sell goods?

A. I did not suppose they would close me out.

Q. You wanted some money out of this thing youself, didn't you?

A. I ought to have had; I had enough in there to have some.

Q. You left Rudolph Ney to collect money while you were gone and place it on that fifteen-hundred-dollar note of Dave May?

A. Yes, sir.

370 Q. Do you know how much Rudolph got?

A. Yes, sir; whatever receipt he gave me for. He left it on a piece of paper.

Q. How much of that money was paid on that note?

A. $396.

Q. What became of the balance of that money?

A. It was left with Mr. Hirsch.

Q. Did you ever get any of it?

A. I did.

Q. How much?

A. I suppose I got all of it; I do not know.

Q. Do you know why the money was not paid on that note, all of it?

A. No, sir.

Q. Don't you know that some freight bills came in to be paid?

A. They were paid from the sales.

Q. How much money did you get from Rudolph and Hirsch out of this money?

A. Hirsch give me $300 and give my wife $50.00, and Rudolph gave me one night in a saloon the balance, $467.00.

Q. You didn't look over the account at all?

A. No, sir.

Q. Can you find out?

A. I suppose I can.

Q. Why didn't you?

A. I took his word.

Q. You had a good deal of confidence in Hirsch?

A. Yes, sir; in all of them. I gave them my fortune.

Q. After you were closed up you went to Hirsch and asked for five thousand dollars?

A. He blowed around himself that he would set me up in business.

Q. Did you ever have any talk with him?

A. I told him I was going down to New Mexico.

Q. Didn't he tell you that he would set you up at Glenwood Springs with a stock of liquors?

A. Yes, sir.

Q. Didn't you tell him that you didn't want anything of the kind?

A. I said, I want to go in my old business, hides and wool.

Q. Didn't you tell him you wanted some money?

371 A. I told him I wanted a loan for eighteen months or two years.

Q. Didn't you go to Rudolph Ney and ask him to help you get twenty-five hundred dollars from Hirsch?

A. I went to Rudolph and was talking about my going away and he said Adolph could not afford to give me so much money; could not give me more than half.

Conversation with Rudolph objected to.

Q. Was there anything said about twenty-five hundred dollars between you and Rudolph?

A. Yes, sir.

Q. What was it?

A. I said I did not care what it was. I wanted to go and make a living. I could not let my family starve.

Q. Do you know Jacob Miller?

A. I do.

Q. Did you have any talk with him on the 26th of this month?

A. About what?

Q. About this matter between you and Dave May and Hirsch?

A. Nothing at all.

Q. In talking with him in Denver on the 26th day of this month with reference to this transaction between yourself and Dave May and Adolph Hirsch, didn't you say this: I will fix them; if I cannot make it stick this way I will some other way?

A. I was talking with Miller, but not on that subject.

Q. When you borrowed the first twenty-five hundred dollars and Dave May endorsed your note for it didn't you tell him that Nathan was going to ship eight or ten car-loads of cattle and would pay you seventy-five hundred dollars for you to take that note up with?

A. He didn't endorse the note; he discounted the note and the bank paid it.

Q. And the bank paid it to you?

A. They paid it to him.

Q. To get him to do that. Didn't you tell him that Nat.

372 Nathan was going to ship eight or ten car-loads of cattle to pay him that money?

A. I did not say anything of the kind. I said that Nat. Nathan would sell cattle and take that note up.

Q. Were you not a little surprised on the 24th of March when they closed you up?

A. No, I was not surprised. My wife had told me to look out for them; that May was — thief and a robber. I was not surprised.

Q. You didn't expect anything of the kind when you came home?
A. No, not right away.

Redirect examination by Mr. NASH:

Q. You said that you took your account of stock some time in the spring of 1886?
A. Yes, sir.
Q. And you stated that you had been selling since that time?
A. Yes, sir.
Q. Hadn't you been purchasing goods?
A. Yes, all the time.
Q. Wasn't your stock greater in the spring of '87 that in '86?
A. Yes, sir.
Q. How long have you been in business?
A. I have been in business for twenty-two years.
Q. How long in the clothing business?
A. For nine years.
Q. Are you a good judge of a stock of goods?
A. Yes, sir; I did not have much of a chance to look through the stock. They was afraid I would put it out of my hands or something.

(Signed) SAM. RICH.

Subscribed and sworn to before me this 2nd day of May, 1887.
(Signed) ANDREW W. BRAZEE,
United States Circuit Court Commissioner.

373 EXHIBIT 1.

If this bill is not correct in every respect return for correction at once. No change will be allowed at time of settlement. Goods shipped at purchaser's risk. All claims for deficiencies must be made within five days after receipt of goods. Our salesmen are not authorized to collect except upon special written orders.

Mr. Sam. Rich, Leadville, Colorado, bought of L. Lowenstein & Co., manufacturers of men's, youths', & boys' clothing, 193 & 195 Adams street.

CHICAGO, *Feb.* 21, 1887.

"Exhibit 1."

Terms cash.
10 days, less 6 per cent.
30 days, less 5 per cent.
May 1st.
Am't payable in Chicago or New York exchange.

8540	8 8* suits & 1 pants	$13.50	$108 00
8546	8 8* "	13.00	104 00
8512	8 8* "	12.50	100 00
8504	8 7* "	14.50	116 00

Figures marked with a * are in black pencil.

8542	8 6*	suits		$13.50	$108 00
8505	8 8*	"		15.00	120 00
8509	8 8*			11.00	88 00
8584	8 2*			18.50	148 00
8500	8 7*			12.50	100 00
8578	8 5*			12.50	100 00
8502	8 7*			12.50	100 00
8674	8 7*			13.50	108 00
8353	8 8*			12.50	100 00
8389	10 9*	Job all		12.50	125 00
8655	8 8*			9.50	76 00
8637	8 5*	1* pants		9.50	76 00
8361	8 3*			12.00	96 00
8665	7 5*	Job all		12.00	84 00
8382	8 7*	" "		9.00	72 00
8628	8 7*			7.00	56 00
8949	8 8*			7.00	56 00
8905	8 8*			4.00	32 00
8907	8 7*	1* pants		5.00	40 00
					$2,113

3,387.2.

(Indorsed:) Sam. Rich.

374 (Indorsed:) No. 2130. U. S. circuit court. L. Lowenstein *vs.* Dave May *et al.* Depositions — behalf of plaintiff- of Sam. Rich & Jacob Rich. Open-, published, and filed October 7, 1887. William A. Willard, clerk.

And afterwards and on, to wit, the 3rd day of November, 1888, came Charles E. Frankenthal, Joseph Freudenthal, and Heny Adler, by I. E. Barnum, Esq., their solicitor, and filed in said court and in said cause their petition for leave to become parties to the bill of complaint heretofore filed herein, and the said petition is in words and figures as follows, to wit:

Figures marked with a * are in black pencil.

Petition of Frankenthal et al. to be Made Complainants.

UNITED STATES OF AMERICA, } ss:
State and District of Colorado, }

In the Circuit Court of the United States for said District.

DANIEL K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

375 To the honorable the judge of said court, in chancery sitting:

The petition of Charles E. Frankenthal, Joseph Freudenthal, and Henry Adler respectfully shows as follows:

That on the 30th day of August, 1888, upon a hearing in this cause an order was entered herein providing, among other things, that all creditors of the above-named defendant, Samuel Rich, who were such prior to the 24th day of March, 1888, might become parties to this cause and share *pro rata* in the property conveyed on that date by said Rich to said defendants May and Hirsch, and that the cause be referred to John W. Webster, one of the masters of this court, to take testimony to determine, among other things, the amounts of the demands of such creditors of said Rich who might seek to become parties to said cause.

That your petitioners are desirous of becoming parties to the bill filed herein and of participating in the benefits thereof as creditors of the class in whose behalf the same was filed and pursuant to the provisions of said order of this court authorizing such joinder and participation and above referred to.

Your petitioner- further shows that they are and for the past two years and more they have been citizens of the State of Illinois and partners doing business at Chicago, in said State, under the said firm name and style of Frankenthal, Freudenthal and Company.

That on or about the 28th day of February, 1887, your petitioners, as partners as aforesaid, sold and delivered to said defendant Rich, at his request, upon credit, certain goods and merchandise consisting of clothing, of the value and at agreed price in all of eleven hundred and forty dollars and sixty cents; that said Rich never paid for said goods nor for any part thereof, and that after-
376 wards, to wit, on the 19th day of April, 1887, your petitioners recovered a judgment upon said indebtedness against said Rich in the county court of Lake county, in the State of Colorado, for the sum of thirteen hundred and seventy-three dollars and thirty-five cents damages, which said judgment is still in full force and is wholly unsatisfied.

Wherefore your petitioners pray that an order may be entered

herein joining them as parties to this cause and entitled to participate *pro rata* in the avails of the property conveyed by said Rich to said May and Hirsch as aforesaid to the amount of their said judgment, to wit, the sum of thirteen hundred and seventy-three dollars and thirty-five cents, your petitioners hereby offering to contribute and share *pro rata* with the complainants herein their just proportion of the expenses of this litigation.

(Signed) I. E. BARNUM,
Solicitor for said Petitioners.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Henry C. Tenney, being first duly sworn, on oath deposes and says that he is one of the attorneys for the above-named petitioners and has authority to make and does make this affi*ant* on their behalf; that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact. Deponent further says that the ground of his belief and his knowledge herein are the statements and admissions made to him by said Rich of the indebtedness claimed in said petition, a certified copy of the judgment therein referred to, and the records of this court; that the reason why this affidavit is not made by the peti-
377 tioners or one of them is that they are all now in the State of Illinois and outside the State and district of Colorado.

(Signed) HENRY C. TENNEY.

Subscribed and sworn to before me this 2nd day of November, A. D. 1888.

(Signed) PERCY AUSTIN,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires M'ch 16, 1892.

(Indorsed:) 2149. Circuit court of the United States, district of Colorado. D. K. Tenney *et al.*, comp., *vs.* Samuel Rich *et al.*, defendants. Petition of Charles E. Frankenthal *et al.* to be made parties complainants. Filed Nov. 3, 1888. William A. Willard, clerk. I. E. Barnum, sol. for p't'f.

378 And afterwards and on, to wit, the 27th day of November, A. D. 1888, came Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, copartners as Sweet, Dempster & Co., by William H. Nash, Esq., and R. D. Thompson, Esq., their solicitors, and filed in said court and in said cause their petition for leave to become parties to the bill of complaint heretofore filed herein; and the said petition is in words and figures as follows, to wit:

Petition of Sweet et al. to be Made Complainants.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

To the said complainants and defendants and their solicitors:

Please take notice that on the 26th day of November, 1888, at the hour of ten o'clock a. m., the undersigned will appear before John W. Webster, the master to whom the above-entitled cause has been referred, at his office, room 10, McClintock block, No.
379 1605 Larimer street, Denver, Colorado, and take testimony in support of the petition of Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, copartners under the name and style of Sweet, Dempster & Co., a copy of which said petition is hereto annexed.

Said petition will be offered and said testimony will be taken pursuant to the previous order of the court entered herein, dated Aug. 30th, A. D. 1888.

(Signed) WILLIAM H. NASH,
R. D. THOMPSON,
Solicitor- for Petitioners.

(Endorsed:) 2149. Filed Nov. 27, 1888. William A. Willard, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

To the honorable the judge of said court, in chancery sitting:

The petition of Samuel H. Sweet, Wesley Dempster, Charles
380 Hutchinson, and Andrew W. Mitchell, copartners as Sweet, Dempster and Co., respectfully shows as follows:

That at the date hereinafter mentioned your peti-oners and each and every of them, as well also as the assignors to your peti oners hereinafter mentioned, also each and every of them, were at the dates hereinafter mentioned and still are citizens of the State of Illinois, and that the said defendants and each of them were at the said time and still are citizens of the State of Colorado.

That on the 30th day of August, 1888, upon hearing in this cause, an order was entered providing, among other things, that all creditors of the above-named defendant, Samuel Rich, who were such on the 24th d-y of March, 1887, might become parties to this cause and share *pro rata* in the property conveyed upon that date — said Rich to said defendants, May & Hirsch, and that the cause be referred to John W. Webster, one of the masters of this court, to take testimony to determine, among other things, the amounts of the demands of such creditors of said Rich who might seek to become parties to said cause.

That your peti-oners are desirous of becoming parties to the bill filed herein and of participating in the benefits thereof as creditors of the class in whose behalf the same was filed and pursuant to the provisions of the said order of this court authorizing such joinder in petition and above referred to.

I. That your peti-oners, Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, are copartners, doing business in the city of Chicago, in the county of Cook and State of Illinois, under the name and style of Sweet, Dempster & Co.,
381 and were such copartners and so engaged in business at and during the times hereinafter mentioned; that on, to wit, the 26th and 28th days of February, A. D. 1887, at the said city of Chicago and State of Illinois, said petitioners sold and delivered to the said defendant, Samuel Rich, one of the defendants in the above-entitled action, goods, wares, and merchandise to the value and amount of nine hundred and thirty-four dollars and fifty cents; that said amount was a fair and reasonable price for the said goods, wares, and merchandise, and that they were sold to the said Rich at his special instance and request, and that he promised to pay for the same; that he had not paid for the same nor for any portion thereof; and thereafter and on, to wit, the 20th day of April, 1877, said claim was reduced to a judgment in the county court in and for Lake county and the State of Colorado, and that said judgment is still unsatisfied in any part.

II. And your peti-oners further show that at the time hereinafter mentioned Lewis Stein was doing business in the city of Chicago and county of Cook and State of Illinois under the firm name and style of Lewis Stein & Co., and that on, to wit, the 27th day of January, 1887, said Stein sold and delivered to the defendant Rich, at the said city of Chicago, at the special instance and request of the said defendant, Rich, goods, wares, and merchandise to the value and amount of two hundred and eighty-seven dollars and forty cents; that the same was a fair and reasonable price for the said goods, wares, and merchandise, and that the said defendant, Rich, promised to pay for the same, but that he has not paid for the same nor

for any portion thereof; and thereafter and on, to wit, the 26th
382 day of April, 1887, the said claim was reduced to a judgment in the county court in and for Lake county, State of Colorado, and that said judgment is still unsatisfied in any part, and thereafter the obtaining of the said judgment and before the filing and bringing of this petition the said Lewis Stein, for a valuable consideration, sold, assigned, and transferred the said judgment to the said peti-oners, Samuel Sweet *et al.*

III. And your peti-oners further show that at the time hereinafter mentioned Simeon Farwell, Stephen Laskey, and Henry S. Farwell were copartners, doing business in the city of Chicago, county of Cook, and State of Illinois, under the firm name and style of Simeon Farwell and Co., and that said S. Farwell & Co. sold and delivered to the said defendant, Rich, on, to wit, the 11th day of February and the 16th day of March, A. D. 1887, at the special instance and request of the said Rich, goods, wares, and merchandise to the value and amount of three hundred and two dollars and seventy-five cents; that the same was a fair and reasonable price for the said goods, wares, and merchandise, and that the said defendants promised to pay for the same; that he has not paid for the same nor for any portion thereof; and thereafter and on, to wit, *on* the 26th day of April, A. D. 1887, the said claim was reduced to a judgment in the county court in and for Lake county, State of Colorado, and that the said judgment is still unsatisfied in any part.

And thereafter the obtaining of the said judgment and before the filing and bringing of this petition the said Simeon Farwell *et al.*, for a valuable consideration, sold, assigned, and transferred the said judgment to the said peti-oners, Samuel H. Sweet *et al.*

IV. And your peti-oners further show that at the time
383 hereinafter mentioned Charles M. Dunlap, Lyndon C. Lawton, and Richard C. Hall were copartners, doing business in the city of Chicago, in the county of Cook and State of Illinois, under the firm name and style of Dunlap, Lawton and Hall, and that said firm on, to wit, the 9th day of March, A. D. 1887, said Dunlap, Lawton and Hall, sold and delivered to the said defendant, Rich, at the special instance and request of the said Rich, goods, wares, and merchandise to the value and amount of three hundred and three dollars and ten cents; that the same was a reasonable and fair price for the said goods, wares, and merchandise, and that defendant has promised to pay for the same; that he has not paid for the same nor for any portion thereof; that thereafter and on, to wit, the 28th day of April, A. D. 1887, the said claim was reduced to a judgment in the county court in and for Lake county, State of Colorado, and that said judgment is still unsatisfied in any part, and that after the obtaining of the said judgment and before the filing and bringing of this petition the said Dunlap, Lawton and Hall, for a valuable consideration, sold, transferred, and assigned the said judgment to the said peti-oners, Samuel Sweet *et al.*

V. And your peti-oners further show that at the times hereinafter mentioned Maier A. Eisman and Rudolph Eisman were copartners, doing business in the city of Chicago, in the county of Cook and

State of Illinois, under the firm name and style of M. A. Eisman and Brother, and that on, to wit, the 5th day of March, A. D. 1887, said M. A. Wisman and Brother sold and delivered to the said defendant, Samuel Rich, at the special instance and request of the said Rich, wares and merchandise to the value and amount of two hundred and sixteen dollars and sixteen cents; that the same was a fair and reasonable price for the said goods, wares, and merchan-
384 dise, and that defendant Rich promised to pay for the same; that he has not paid for the same nor for any portion thereof, and that before the filing and bringing of this petition the said M. A. Eisman and Brother, for a valuable consideration, sold and transferred and assigned this said claim and their interest therein to the petitioners herein, Samuel H. Sweet *et al.*

VI. And your petitioners further show that at the times hereinafter mentioned Henry Fitzinger, Max Tuhelcski, and Isaac Frohlichastein were copartners, doing business under the firm name and style of Kitzinger, Tuhelski, and Frohlichstein, at the city of St. Louis and State of Missouri; that on, to wit, the 9th day of February, A. D. 1887, the said Kitzinger *et al.* sold and delivered to the said defendant, Rich, goods, wares, and merchandise to the value and amount of $246.00, at the special instance and request of the said Rich; that the said amount was a fair and reasonable price for the said goods, wares, and merchandise, and that the said Rich promised to pay for the same; that he has not paid for the same nor any portion thereof; and thereafter and before the filing and bringing of this petition the said Kitzinger, Tuhelske, and Frohlichstein, for a valuable consideration, sold and transferred and assigned the said claim and all *there* interest therein to the said petitioners, Samuel H. Sweet *et al.*

VII. And you- petitioners further show and allege that each and all of the foregoing goods, wares, and merchandise, purchased as aforesaid by this defendant Rich from these various parties and not paid for in any part, were delivered to the said Rich and by him placed with the rest of his stock in the city of Leadville, in
385 the county of Lake and State of Colorado, and were a portion of the goods, wares, and merchandise conveyed by him to the defendants May and Hirsch by virtue of the chattel mortgage in the above-named cause set forth and introduced in evidence.

That these petitioners are creditors of the said Rich in like manner and under same conditions as are the rest of the plaintiffs in the above-entitled causes, and as such creditors are entitled to *pro rata* in the distribution of such assets as may be forthcoming from said Rich.

Wherefore your petitioners pray that they may be made parties to the above-named suit; that their claims may be passed upon, and that they may be allowed in said suit, as the creditors of the said Rich, to participate *pro rata* in the avails of the property conveyed by said Rich to said May & Hirsch as aforesaid, and for such

other and further relief as to this honorable court may seem just and proper, and for their costs in this behalf expended.

(Signed) WILLIAM H. NASH,
R. D. THOMPSON,
Attorneys for Petitioners.

STATE OF COLORADO, }
County of Lake, } *ss:*

William H. Nash, of lawful age, being first duly sworn, on his oath doth depose and say that he is one of the attorneys for the above-named petitioners; that each and every one of the said petitioners is absent from this county and State, and therefore this deponent makes this verification; that he has read the foregoing and annexed petition and knows the contents of the same, and knows that the same is true except as to the matters and things
386 therein stated on information and belief, and as to those he believes it to be true.

(Signed) WILLIAM H. NASH.

Subscribed and sworn to before me this 24th day of November, A. D. 1888.

(Signed) GEO. S. PHELPS,
[SEAL.] *Judge and Clerk of the County Court,*
Lake County, Colorado.

(Indorsement:) 2149. In circuit court of United States. D. K. Tenney *et al. vs.* Samuel Rich *et al.* Petition of Samuel H. Sweet to be made complainants. Filed Nov. 27, 1888. William A. Willard, clerk. William H. Nash, R. D. Thompson, att'ys for petitioner.

And afterwards and on, to wit, the 8th day of December, A. D. 1888, there was opened, published, and filed in said court and in said sause the depositions of Louis D. Shoenberg, Samuel L. Walker, and J. H. Korty on behalf of complainant-; and the said depositions are in words and figures as follows, to wit:

Depositions—Shoenberg et al., Behalf Complainants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

387 DANIEL K. TENNEY *et al.* *vs.* SAMUEL RICH *et al.*

MAURICE L. LEOPOLD *et al.* *vs.* SAMUEL RICH *et al.*

Testimony of witnesses taken before Robert H. Buck, one of the masters in chancery of the said circuit court of the United States within and for the district of Colorado, under and pursuant to the order of the said circuit court of the United States, in two certain causes wherein Daniel K. Tenney *et al.* and Maurice L. Leopold *et al.* are complainants and Samuel Rich, Ed. Nathan, David May, and Adolph Hirsch are defendants, both on behalf of the complainants and of the defendants, beginning on the 13th day of October, A. D. 1888, at 2 o'clock p. m., at the office of Bissell and Gunnell, in the city of Leadville, county of Lake and State of Colorado, and thence continuing until same were completed.

LOUIS D. SCHOENBERG, a witness on the part of the defendants, being first duly sworn according to law, on oath testified as follows in response to interrogatories to him propounded by A. T. GUNNELL, Esq., of counsel for the defendants:

Q. State your name, age, place of residence, and occupation.

A. Louis D. Schoenberg; age, 31; residence, Leadville; occupation, merchant.

388 Q. 2. At what place are you now occupied in Leadville, and when did you begin to do business in said place?

A. At the Manhattan clothing store; in August, A. D. 1887.

Q. 3. Are you acquainted with one Isadore Heller, who has testified in this cause and who was employed in what is now known as the Manhattan store?

A. I am.

Q. 4. I will ask you to state if you know any facts in reference to the character for honesty and uprightness of character of said Heller.

Objected to as irrelevant, immaterial, and incompetent.

A. I do.

Q. 5. State any facts with which you may happen to be conversant on that subject.

Objected to. Same objection.

A. I know that he was employed at the Manhattan clothing store or company, and that he obtained money belonging to the firm; he collected money, rather, which he had no right to, in half a dozen instances and appropriated the money for his own use.

Q. 6. State whether or not you had any conversation with said Heller subsequent to the time that your brother Joseph Shoenberg bought the stock previously owned by Rich—with this Isadore Heller concerning the value of the stock; if so, state what the conversation was.

Objected to as irrelevant, immaterial, and incompetent.

A. Well, I came here last—it was in the early part of October, 1887—Heller was in the employ of the Manhattan Clothing Company, and, knowing that my brother had bought Rich's stock, I asked Mr. Heller what he thought of the purchase—he was
389 in the store nearly all the time while the stock was being closed out. He told me that he thought it was a high price paid for the stock, and if it had been him he would never have bought the stock; it consisted of old rubbish. That was his language, as near as I can recollect it.

Q. 7. State if you know whether the said Heller left the employment of the Manhattan Clothing Company voluntarily or was he discharged.

A. He was discharged.

Q. 8. State if you know whether or not David May, one of the defendants in this action, was a partner and is still a partner in the Manhattan Clothing Company.

A. He is.

And thereupon, on cross-examination by R. D. THOMPSON, Esq., counsels for the plaintiffs, said SCHOENBERG testified as follows:

X Q. 1. You say that Mr. Heller collected money and appropriated it to his own use. Of whom did he collect that money and how much?

A. He did. I will give you the names and the amounts. I can give you the dates very nearly, but not exactly. There is one S. Allen, $25, money he made no return of at all; W. E. Gillam, $5; F. Gilbert, ten dollars; Pete O'Connel, five dollars, and Thomas Smith, five dollars.

X Q. 2. How do you know that he collected this money?

A. How do I know? Well, he acknowledged it.

X Q. 3. When was this that you were advised of this fact?

A. It was along in the early part of March some time.

X Q. 4. How long did you continue him in your employ after that?

A. Not at all; we dismissed him.

X Q. 5. You say in October, 1887, you had occasion to talk with Mr. Heller about this stock. Where was he then?

A. He was in the employ of the Manhattan Clothing Company.

390 X Q. 6. From which he had been dismissed some tim in March?

A. Yes, sir; he was employed——

X Q. 7. It was March, 1887, he was discharged?

A. Yes, sir.

X Q. 8. Was your brother a member of the Manhattan Clothing Company?

A. Yes, sir.

X Q. 9. Had he ever been in business before?

A. He had.

X Q. 10. I mean in the clothing business?

A. Before? Oh, yes, sir.

(Signed) LOUIS D. SCHOENBERG.

SAMUEL L. WALKER, a witness on the part of the plaintiff-, being first duly sworn according to law, on oath testified as follows in response to interrogatories to him propounded by R. D. THOMPSON, Esq., counsel for the plaintiffs:

Q. 1. What is your name, age, occupation, and place of residence?

A. Samuel L. Walker; 31 years old; occupation, clothing clerk; reside — Leadville, Colorado.

Q. 2. How long have you resided in Leadville and in what business have you been engaged during that time?

A. I have been in Leadville for nearly ten years. The first six years I might say I was mining. I didn't work in the mines, but I was around them.

Q. 3. Well, the balance of the time?

A. The balance of the time I have been selling clothing, furnishing goods, etc.

Q. 4. Are you acquainted with the values of clothing in this market and were you so acquainted in March, A. D. 1887?

A. Yes, sir; I was; I think I am fairly well posted.

Q. 5. Did you know anything about that time as to the value of gents' furnishing goods?

391 A. Yes, sir, I did; I probably was as well posted then as I am now.

Q. 6. Had you been in business just prior to March, 1887?

A Yes, sir; I had.

Q. 7. Do you know Samuel Rich?

A. Yes, sir; I do.

Q. 8. Were you acquainted with his stock of merchandise about the time he transferred it to May and Hirsch, in March, 1887?

A. Well, I was in there the morning of the day he transferred it, and he showed me through the stock pretty well from one end of the house to the other.

Q. 9. Now what would you say was the value of that stock at that time?

A. Well, I should think it was worth somewhere between thirty-five and forty thousand dollars—thirty-five thousand dollars. I believe there was that much, and I believe there might have been forty thousand, if all the boxes were full.

Q. 10. Well, did you have occasion to make a pretty fair examination of the stock?

A. Oh, fairly good. I did not examine it with any purpose. I never thought about it. I happened to be in there and he showed me through the stock.

Q. 11. How was the stock put in around the store?

A. He had a big line of clothing.

Q. 12. Was the clothing so that it could be seen?

A. Yes, sir; I do not think there was any clothing there that could not be seen.

Q. 13. How was it located in the store?

A. The clothing was in the central part of the building, where most clothing-houses keep it.

Q. 14. On tables or in boxes?

A. On tables.

And thereupon, on cross-examination by A. T. GUNNELL, Esq., of counsel for the defendants, said WALKER testified as follows:

392 X Q. 1. Mr. Walker, were you ever in the clothing business for yourself—on your own account?

A. I was for awhile with Dave May. I do not know whether I could swear it was on my own account or not. I was interested with Dave May in the profits of the business.

X Q. 2. For how long a time?

A. I would judge about four months and a half or five months. I don't exactly remember.

X Q. 3. Did you during that time ever go into the market to buy goods?

A. No; I never went into the market in my life.

X Q. 4. Did you ever buy any goods here for the concern when you were in with May?

A. No, sir; I never bought a dollar's worth of goods while I was interested with Mr. May.

X Q. 5. Do you consider, Mr. Walker, that your knowledge of the business would justify you in undertaking to buy—to make purchases for the store? Would you have undertaken it or preferred to have some one else make the purchases at the time you were interested with Mr. May?

A. If I was in business for myself I would buy for myself.

X Q. 6. When you were with Mr. May would your judgment justify you in making purchases?

A. Yes, sir; I believe it would. I believe my judgment was sufficient to buy goods for myself.

X Q. 7. Under your arrangement with Mr. May you were never permitted to make purchases, were you?

A. No, sir.

X Q. 8. Did you take any invoice of this stock of Sam. Rich's?

A. No, sir; not the slightest.

X Q. 9. Did Sam. Rich show you a bill of the goods?

A. No, sir; it is a rough estimate I make.

X Q. 10. It is rather a guess, Mr. Walker?

A. Yes, sir; it is decidedly a guess; not rather, but decidedly a guess.

393 X Q. 11. At that time you would not have purchased the goods, about thirty-five thousand dollars, for yourself on that rough estimate, would you?

A. No, sir; I would not take any man's stock unless I could invoice it.

X Q. 12. So that you would not consider that you have given a certain estimate as to these goods?

A. Oh, no, sir, not by any means, and I don't want it understood that way. This is entirely a guess I make.

X Q. 13. When was it you say you went in with Mr. May?

A. I think it was about the middle of September.

X Q. 14. Of what year?

A. That would be 1885 or 1886. It was 1886, I think, about the middle of September. I don't remember exactly the time.

X Q. 14. How long did you remain in business with May?

A. About four and a half or five months.

X Q. 15. What had been your business previous to that time, Mr. Walker?

A. Before I went into the clothing business with Mr. May?

X Q. 16. Yes, sir.

A. I had been mining.

X Q. 17. You had not been in that business, the clothing business, before?

A. No, sir; not in the West here.

Redirect examination by R. D. THOMPSON, Esq.:

Q. 2. While you were in business with Mr. May were you informed as to the price attached to the goods in the store?

A. Yes, sir; I think I was.

Q. 2. Well, you say you think you was. Didn't you have the cost marked down in the goods?

A. Yes, sir.

Q. 3. How were these goods marked?

394 A. Mr. May added ten per cent. to his cost price in the East, which gave us the cost.

Q. 4. While you were in business with Mr. May you in that way became acquainted with the value of goods—gents' furnishing goods?

A. Yes, sir; fairly well acquainted.

Q. 5. You have since been handling clothing in Leadville?

A. Yes, sir.

Q. 6. In handling clothing you become acquainted with what it costs?

A. Yes, sir; I am positive I do where I am working now because I check all the goods in my department.

Q. 7. How long have you been engaged where you are now?

A. About eighteen months; this is at a guess. I don't know the exact time I went there. I think about eighteen months.

Q. 8. You consider yourself now fully advised as to the values of clothing and gents' furnishing goods in Leadville?

A. Fairly well; yes, sir.

Q. 9. Your estimate of the value, then, is based upon what you then knew and since have learned, is it?

A. Yes, sir; goods cost about as they did then. I don't think the difference would be enough to change the figures at all.

Q. 10. In your cross-examination you stated that your estimate was merely a guess; do you mean to be understood that your estimate was not based upon data and facts?

A. No; it was an estimate. I was in there a good deal, not with a view of forming an estimate at all. I was just simply in there talking to Mr. Rich because I knew him well and he seemed to take pride in showing me what a nice stock of goods he had.

Q. 11. Is it not a fact that in any store containing gents' furnishing goods and clothing you can make a pretty close estimate as to what the stock is worth?

395 A. Well, a stock of that size I would not think a man would be justified in saying that he believed that he could come near it at all; when I say that I mean within a thousand or two thousand dollars. Probably I may have missed it five thousand dollars. It is a big thing when a man guesses at a lot of clothing and gents' furnishing goods that way.

Q. 12. And it was that reason you placed your estimate at between thirty-five and forty thousand dollars?

A. Yes, sir; I would not swear to anything; you understand how it is that I can't form an exact estimate on it; it is too big amount of goods.

(Signed) S. L. WALKER.

And thereupon it was agreed to adjourn until Monday, the 15th day of October, A. D. 1888, at 2 o'clock.

MONDAY, *Oct. 15th, A. D.* 1888, at 2 o'clock p. m.

Met pursuant to adjournment, R. D. Thompson, Esq., attorney for the plaintiffs, and A. T. Gunnell, Esq., of counsel for the defendants, being present.

J. H. KORTY, a witness on the part of the defendants, testified as follows in response to interrogatories to him propounded by A. T. GUNNELL, Esq., of counsel for the defendants:

Q. 1. What is your name, age, place of residence, and occupation?

A. J. H. Korty; 34 years old; reside — Leadville, Colorado; deputy sheriff of Lake county.

396 Q. 2. What was your occupation in March and April, 1887?

A. Deputy sheriff.

Q. 3. Were you acquainted with the stock of goods formerly owned by Samuel Rich, one of the defendants in this cause, and

mortgaged to May & Hirsch, other defendants herein, during the months of March and April, 1887?

Objected to—immaterial and irrelevant and not shown that he has any knowledge of goods or experience in stock.

A. Well, I don't know anything about stock.

Q. 4. Were you acquainted with that stock?

A. Yes, sir; I knew there was such a stock.

Q. 5. I will ask you to state what, if anything, you know about the sale of that stock of goods under the chattel mortgage given to May and Hirsch by Sam. Rich, and whether or not you took any part in that sale; if so, what.

Objected to. Same objection.

A. Yes, sir; I took part in it; I was asked to sell the goods, auctioneer them.

Q. 6. State whether or not you did auctioneer the goods.

Objected to. Same objection.

A. I did.

Q. 7. Have you any interest of any kind whatsoever in the result of this litigation?

A. I have not.

Q. 8. Did you ever have any interest in the transaction whatsoever?

A. I did not.

Q. 9. Now will you please state how and where the goods were sold and in the manner in which they were sold and all that took place at the time of the sale?

Objected to. Same objection.

397 —. Well, I started the sale. I first started to sell the goods each separate; started with the best part of the goods first and got bids on several. It was then thought at that rate—figuring at that rate—they would not bring enough to pay this amount of the mortgage—eighteen thousand dollars. I was then told to sell all in a lump—the whole stock of goods.

Q. 10. State if you did sell them in that way?

A. Yes, sir; I did.

Q. 11. State whether or not, in your judgment, the goods brought sold in that way more or less than they would have brought sold in parcel lots.

Objected to. Same objection.

A. I think they brought more sold in a lump than they would have brought if sold in small parcels.

Q. 12. State, if you please, about how many people and who they were present at the time of the sale.

A. The store-room was quite crowded. I notice- there Jake Sands, the Monheimers, and I think Sam. Berry was there, of Berry & Engelmans.

Q 13. How long have you lived in Leadville?

A. Nine years and eight months.

Q. 14. State whether or not you are reasonably well acquainted with all the people of Leadville who are engaged in anything like the clothing business.

A. I think I am.

Q. 15. State, if you please, about what proportion of that kind of merchants and men who reside in Leadville were present at the time the sale was made.

A. I think most of them were there; I don't remember.

Q. 16. You know Jake Sands?

A. I do.

Q. 17. Do you know whether any bid was made for him
398 or by him at the time you auctioned the goods?

A. There was.

Q. 18. Do you recollect the amount of his bid?

A. I don't remember exactly, but I think it was twenty thousand dollars.

Q. 19. What business was Sands engaged in in this town at that time?

A. The clothing business.

Q. 20. I will ask you to state now, Mr. Korty, how you sold the goods, as to giving people ample opportunity to bid on them.

A. I gave them lots of time; I tried to get all I could for them.

Q. 21. State whether or not you made diligent effort to secure the highest bid to be had for the goods.

A. I did.

Q. 22. State whether or not you continued asking for further bids when Sands had bid twenty thousand dollars and some one else had raised that bid.

A. I did.

And thereupon, on cross-examination by R. D. THOMPSON, Esq., counsel for the plaintiffs, said KORTY testified as follows:

X Q. 1. Mr. Korty, in what capacity did you sell those goods?

A. As auctioneer, I guess.

X Q. 2. Sell them as deputy sheriff?

A. No; I don't know as I did.

X Q. 3. For whom did you act as auctioneer?

A. Dave May.

X Q. 4. Dave May engage you?

A. Yes, sir.

X Q. 5. Dave May pay you?

A. Yes, sir.

X Q. 6. In answer to the interrogatory in regard to the sale of the goods you stated you were directed to sell the goods all in a lump. By whom was this direction given?

A. Dave May, I think; it was either him or Judge Gunnell; I don't remember exactly.

399 X Q. 7. What has been your business during your residence in Leadville?

A. Assaying and mining for five years and deputy sheriff for five years, nearly.

X Q. 8. What knowledge, if any, have you of the clothing business or the value of clothing?

A. None at all.

X Q. 9. On what do you base your opinion that the goods brought more sold in that way in which they were finally sold than they would have brought the first way you began to sell?

A. Their say-so.

X Q. 10. What do you mean by their say-so.

A. They figured it.

X Q. 11. Who do you mean by they?

A. Judge Gunnell and Dave May.

X Q. 12. You acted——

A. I acted under their instructions.

X Q. 13. To whom did you finally sell the goods?

A. To J. E. Schonberg.

X Q. 14. Did he pay you any money?

A. I think Joe Schoenberg gave a check to Joe Lamping, the then sheriff, under whom I was acting at the time as deputy sheriff.

X Q. 15. If you sold the goods as auctioneer, Mr. Korty, will you explain why the check was given to Lamping as sheriff?

A. I don't know.

X Q. 16. Then there was no money paid you personally, either as auctioneer or as deputy sheriff, for the sale of the goods?

A. There was not.

X Q. 17. And you know nothing, of your own knowledge or experience, either as to the value of the goods or as to the best method of selling them, except as advised by these parties?

A. I did not.

(Signed) J. H. KORTY.

400 STATE OF COLORADO, } ss:
County of Lake, }

I, Robert H. Buck, master in chancery of the circuit court, designated by order of the court to take the testimony of witnesses in the above-entitled causes, at Leadville, Colorado, do hereby certify—

That before the taking of the depositions of the said witnesses, Louis D. Schoenberg, Samuel L. Walker, and J. H. Korty, they, the said witnesses, were severally duly cautioned and sworn by and before me to testify the truth, the whole truth, and nothing but the truth; that the testimony of said witnesses was reduced to writing in my presence and after having been so reduced to writing was carefully read over by said witnesses respectively and was thereupon signed by each of said deponents; that the verification by said witnesses of their testimony after reading the same was expressly waived by counsel; that the said plaintiffs were represented by R. D. Thompson, Esq., and the said defendants by A. T. Gunnel, Esq., during the whole time of the taking of said testimony.

I further certify that I am not attorney or of counsel to either of

the parties to said cause nor in any manner interested in the event thereof.

Witness my hand this 17th day of October, A. D. 1888.

(Signed) ROBERT H. BUCK,
Master in Chancery.

Master's fees, $16.05, paid by respondent Hirsch.

(Indorsed:) No. 2149. In the U. S. circuit court for the district of Colorado. Daniel K. Tenney *et al.*, pl'ff-, *vs.* Samuel Rich *et al.*, def'ts. Deposition- of Louis D. Schoenberg, Samuel L. Walker, and J. H. Korty for complainants & def'ts. Opened, published, and filed Dec. 3, 1888. William A. Willard, clerk.

401 And afterwards and on, to wit, the 4th day of December, A. D. 1888, came L. Brown, Maurice Brown, and B. Scheideman, partners, &c., as Brown Bros. & Co., by A. T. Gunnel, Esq., their solicitor, and filed in said court and in said cause their petition for leave to become parties to the bill of complaint heretofore filed herein; and the said petition is in words and figures as follows, to wit:

Petition of Brown et al. to be Made Complainants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

Now, on this day, come L. Brown, Morris Brown, and B. Scheideman, partners doing business under the firm name and style of Brown Bros. & Co., and move the court that they be allowed to be made parties to the above-entitled suits for the reasons set forth in the petition hereunto attached.

(Signed) A. T. GUNNELL,
Att'y for Petitioners.

(Indorsed:) 2149. Filed Dec. 4, 1888. Willliam A. Willard, clerk.

402 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

To the Honorable Moses Hallett, judge of said court, in chancery sitting:

Your petitioners, L. Brown, Morris Brown, and B. Scheideman, partners doing business under the firm name and style of Brown Bros. & Co., respectfully represent unto your honor—

First. That on and prior to the 24th day of March, A. D. 1887, the defendant above named, Samuel Rich, was indebted to your petitioners for goods, wares, and merchandise theretofore sold and delivered to the said defendant, Rich, at the city of Leadville, county of Lake and State of Colorado, of the value of the sum of eleven hundred and thirty-nine ($1,139.00) dollars; that action was brought in the county court of Lake county, State of Colorado, by said Brown Bros. & Co. against said Rich and judgment thereon obtained on the 8th day of April, A. D. 1887, against the said Rich by your petitioners for the sum of eleven hundred and thirty-
403 nine ($1,139.00) dollars, together with costs, taxed at the sum of eighteen and $\frac{55}{100}$ ($18.55) dollars; that your petitioners are desirous of becoming parties to the bill filed herein and of *of* participating in the benefits thereof as creditors of the class in whose behalf same was filed and pursuant to the provisions of the order of this court authorizing such joinder and petition, made on the 30th day of August, A. D. 1888; that no part or portion of said indebtedness or judgment has been paid by any person or persons whomsoever to these petitioners or to any one for them.

Wherefore your petitioners pray that they may be made parties to the above-named suits, and that *there* claims may be passed upon and allowed in said suits *pro rata*, as the equities of the case may seem to your honor to require.

(Signed) A. T. GUNNELL,
Attorney for Petitioners.

STATE OF COLORADO, } ss:
County of Lake, }

A. T. Gunnell, of lawful age, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the above-named petitioners; that each and every one of said petitioners is absent from this county and State, and therefore this deponent makes this verifica-

tion; that he has read the foregoing annexed petition and knows the contents thereof, and that the same is true of his own knowledge.

(Signed) A. T. GUNNELL.

Sworn to and subscribed before me this 1st day of December, A. D. 1888.

404 (Signed) ALONZO WALKER,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires August 7, 1892.

(Indorsed:) No. 2149. U. S. circuit court, district of Colorado. Daniel K. Tenney *et al.*, plaintiff-, *vs.* Samuel Rich *et al.*, defendants. Petition of Brown Bros. & Co. to be made complainants. Filed Dec. 4, 1888. William A. Willard, clerk. A. T. Gunnell, att'y for petitioners.

And afterwards and on, to wit, the 10th day of December, A. D. 1888, came Henrietta Metcalf, Rachael Nathan, and Alva Adams, by Charles H. Toll, Esq., their solicitor, and filed in said court and in said cause their petition to become parties to the bill of complaint heretofore filed herein; and the said petition is in words and figures as follows, to wit:

Petition of Metcalf et al. to be Made Complainants.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for said District.

405 D. K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants,

and

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

To the above-named complainants and defendants and their solicitors:

Please take notice that on Friday next, the 14th inst., I will appear before J. W. Webster, one of the masters of this court, to whom above cause has been referred, at his office, in Denver, Colorado, at the hour of ten o'clock a. m., to take testimony pursuant to the terms of the order entered herein on the 30th day of August, 1888, in support of the three petitions heretofore filed herein, true copies of which are hereto attached.

(Signed) C. H. TOLL,
Solicitor for Petitioner-.

Dated at Denver this 10th day of December, 1888.

(Indorsed:) No. 2149. Filed Dec. 10, 1888. William A. Willard, clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for said District.

D. K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants,

and

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

406 To the honorable the judge of said court:

The petition of Henrietta Metcalf respectfully represent-unto this honorable court:

I. That she is desirous of becoming a party in the above cause, in pursuance to the terms of the order entered herein upon the 30th day of August, 1888.

II. That the said defendant, Samuel Rich, is indebted to her upon a promissory note, a true copy of which, together with endorsements thereon, is hereunto attached.

III. That this petitioner is a creditor of said Rich in like manner and of the same class as are the rest of the plaintiffs in the above-entitled causes, and as such creditor is entitled to prorate in the distribution of such assets as may be forthcoming from said Rich.

Wherefore your petitioner prays that she may be made a party to the above-named suit; that her claim may be passed upon, and that she may be allowed in said suit as a creditor of the said Rich to participate and prorate in the avails of such assets as aforesaid, and for such other and further relief as to this honorable court may seem just and proper, and for her costs in this behalf expended.

(Signed) C. H. TOLL,
Sol. for Petitioner.

407 STATE OF COLORADO, *County of Arapahoe,* } ss:

Francis A. Campbell, being duly sworn, says that he is the agent for the above-named petitioner and duly authorized to make this affidavit in her behalf; that the said petitioner is absent from this county and State, and therefore this verification is made by affiant; that he has read the foregoing petition and knows the contents thereof, and that the same are true except as to the matters as are stated on information and belief, and as to those matters he believes them to be true.

(Signed) F. A. CAMPBELL.

Subscribed and sworn to before me this 10th day of December, A. D. 1888.

[NOTARIAL SEAL.] WILLIAM R. BARBOUR,
Notary Public.

My commission expires Oct. 19, 1892.

(Indorsed:) 2149. Petition of Henrietta Metcalf.

(Copy.)

$1,300.00. LEADVILLE, *Nov. 25th*, 1886.

Nine months after date we promise to pay to the order of Mrs. H. Metcalfe thirteen hundred dollars at Leadville, Colorado, value received.

SAM. RICH.
ED. NATHAN.

(Endorsement:) Received $26.00 interest on note to Dec. 25th, 1886. Mrs. H. Metcalfe. Received interest in full up to date March 25th, 1887. Mrs. H. Metcalf.

408 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for said District.

D. K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants, }

and

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

To the honorable the judge of said court:

The petition of Rachael Nathan respectfully represents unto this honorable court:

I. That she is a creditor of the said defendant, Samuel Rich, in like manner and of the same class as are the complainants in the above causes, and that she is desirous of becoming a party in said suit in pursuance to the terms of the order entered herein on the 30th day of August, 1888.

II. That the indebtedness of said Rich to this petitioner consists of money loaned to the firm of Nathan & Company, composed of one Edward Nathan and the said Samuel Rich, on the 29th day of January, 1884, to the amount of thirty-five hundred dollars, together with interest thereon from said day at ten per cent. per annum.

III. That no portion of said sum nor interest has been repaid to

your petitioner, but the whole of said sum, together with interest as aforesaid, is still justly due and owing to her.

Wherefore your petitioner prays that she may be made a party to the above-named suit; that her claim may be passed upon, and that she may be allowed in said suit, as a creditor of the said
409 Rich, to participate and prorate in the avails of such assets as aforesaid, and for such other and further relief as to this honorable court may seem just and proper and for her costs in this behalf expended.

(Signed) C. H. TOLL,
Solicitor for Petitioner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Rachel Nathan, being duly sworn, deposes and says that she is the petitioner above named; that she has heard read to her the above petition and knows the contents thereof, and that the same are true of her own knowledge except as to such matters as are therein stated upon information and belief, and as to such she believes them to be true.

(Signed) RACHAEL NATHAN.

Subscribed and sworn to before me this 10th day of December, A. D. 1888.

(S'g'd) WILLIAM R. BARBOUR,
[NOTARIAL SEAL.] *Notary Public.*

My commission expires Oct. 19, 1892.

(Indorsed:) 2149. Petition of Rachael Nathan. Filed Dec. 10, 1888. William A. Willard, clerk.

LEADVILLE, *Dec.* 31*st*, 1885.

Four months after date I promise to pay to the order of Ed. Nathan one thousand dollars at Carbonate bank, Leadville, Colo., value received.

Due May 3rd.

SAMUEL RICH.

(Endorsed:) Ed. Nathan.

410 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for said District.

D. K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants, }

and

MORRIS LEOPOLD *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

To the honorable the judge of said court:

The petition of Alva Adams respectfully represents to this honorable court—

I. That he — a creditor of the said Samuel Rich and is desirous of becoming a party hereto in pursuance to the terms of the order entered herein on the 30th day of August, 1888.

II. That the said Samuel Rich is indebted to him in the sum of one thousand dollars and interest upon a promissory note, a true copy of which, together with endorsements thereon, is hereto attached.

III. That the said Samuel Rich is also indebted to him in the sum of twenty-five hundred dollars and interest thereon at the rate of ten per cent. per annum from the 18th day of June, 1883, for money loaned upon that day, to the amount of twenty-five hundred dollars aforesaid, by one Nathaniel Nathan to the firm of Nathan & Company, composed of one Edward Nathan and the said defendant Rich, which said claim was thereafter and before the filing or bringing of this petition duly assigned by said Nathaniel Nathan for a valuable consideration to this affiant.

411 IV. That your petitioner is a creditor of said Rich in respect of said claims in like manner and of the same class as are the rest of the plaintiffs herein, and as such creditor is entitled to prorate in the distribution of such assets as may be forthcoming from said Rich.

Wherefore your petitioner prays *prays* that he may be made a party to the above-named suit; that his claim may be passed upon, and that he may be allowed in said suit, as a creditor of the said Rich, to participate and prorate in the avails of such assets as aforesaid, and for such other and further relief as to this honorable court may seem just and proper, and for his costs in this behalf expended.

(Signed) C. H. TOLL,
Solicitor for Peti-oner.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Alva Adams, being duly sworn, deposes and says that he is the petitioner above named; that he has read the above petition and knows the contents thereof, and that the same are true of his own

knowledge except as to the matters therein stated on information and belief, and — to those matters he believes the same to be true.

(Signed) ALVA ADAMS.

Subscribed and sworn to before me this 10th day of December, 1888.

[NOTARIAL SEAL.] (Signed) A. SAGENDORF,
Notary Public.

My commission expires ——.

412 (Indorsed:) 2149. Petition of Alva Adams. Filed Dec. 10, 1888. William A. Willard, clerk.

(Indorsement:) No. 2149. U. S. circuit court, district — Colorado. D. K. Tenney *et al. vs.* Samuel Rich *et al.* Petitions of Alva Adams, Henrietta Metcalfe, & Rachel Nathan for leave to become parties. Filed Dec. 10, 1888. William A. Willard, clerk. Chas. H. Toll, attorney-at-law, Denver, Colo. Colorado National Bank building. C. H. Toll, solicitor for petitioner.

And afterwards and on, to wit, the 28th day of December, A. D. 1888, came John W. Webster, Esq., a master in chancery of said court, and filed in said court and in said cause his report, and the said report is in words and figures as follows, to wit:

Master's Report.

Pleas in the Circuit Court of the United States, District of Colorado, Sitting at Denver.

TUESDAY, *August 30th, A. D.* 1888.

At chambers, before the Honorable Moses Hallett, district judge.

413 DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. In Chancery. Creditors' Bill for Relief.

This cause coming on to be heard upon the bill of complaint herein, the answer thereto and the replication of the complainants to such answer, and the proofs taken in such action, and having been argued by counsel for the respective parties, and the court, having duly considered the same, doth find that the transfer of the property on the 24th day of March, A. D. 1887, from the said Rich to the said May & Hirsch was a general assignment by said Rich of all or substantially all of his property, and that the creditors of said Rich at the date of said transfer are entitled to their *pro rata* share of the said property so transferred.

It is therefore ordered that the creditors of the said Rich at the date of said transfer who are not now parties to this proceeding may become parties herein and receive their *pro rata* share of the property so transferred; that this cause be referred to John W. Webster, a master of this court, at Denver, Colorado, to examine such wit-

nesses as shall be produced before him, and also to examine such other testimony as shall be taken under this order, as hereinafter provided for, concerning the value of said property transferred as aforesaid and as to the amounts of the several demands of the complainants and of the said May & Hirsch, and of such other creditors as may seek to become parties hereto; also as to the actions brought by other creditors of said Rich against said Rich in Lake
414 county, Colorado, and pending at the time of the filing of complainant's bill herein, the parties to such actions, the amounts involved, and the proceedings had therein, and report the same, together with his conclusions, to this court; that the parties hereto may take the testimony of such witnesses as they desire before Robert H. Buck, a master of this court, at Leadville, Colorado, who is hereby directed to take and report the same to the court with all convenient speed.

It is further ordered that the depositions of witnesses residing out of the State may be taken under the rules of this court relating to depositions, and that the parties hereto are at liberty to apply to this court at any time for further directions.

A true copy as of record.

Teste: WILLIAM A. WILLARD, *Clerk*,
[SEAL.] By F. W. TUPPER, *Deputy Clerk*.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

To A. Heller (Garson, Kerngood & Co.) and Isadore Heller (Solomon's), Greeting:

You are hereby commanded that, setting aside all manner of excuses or delay, you and each of you personally be and appear before John W. Webster, a master in chancery of the circuit court of the United States for the district of Colorado, at his office, McClintock block, in the city of Denver, in said district, forthwith and remain thereafter to testify in the cause wherein Daniel K. Tenney is complainant and Samuel Rich *et al.* are defendants on behalf of the complainants.

And this you shall in nowise omit under penalty of the law. Hereof fail not.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States of America, and the seal of the said circuit court, at the city of Denver, in said district, this 4th day of October, A. D. 1888, and of the Independence of the United States the 113th year.

[SEAL.] (Signed) WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

415 (Indorsement:) 2149. Gen. No., 2149. Circuit court of the United States for the district of Colorado. Daniel K. Tenney *vs.* Samuel Rich *et al.*, complainants. Subpœna behalf of complainants. District of Colorado, *ss:* Denver, Oct. 4, 1888. I have duly served the within subpœna by reading the same to the within-named

A. Heller on the 4th day of October, A. D. 1888. I. Heller not found. Zeph. T. Hill, United States marshal, by E. L. Currier, deputy marshal. Fees: Service, 1 at 50 cts., .50; mileage, go. only, 1 mile at 6 cts., .06—total, .56. Filed this 4th day of October, A. D. 1888, at master's office. John W. Webster, master. R. D. Thompson, att'y for complainant.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for the District of Colorado.

DANIEL K. TENNEY *et al.* }
vs. }
SAMUEL RICH *et al.* }

MAURICE LEOPOLD *et al.* }
vs. }
SAMUEL RICH *et al.* }

Testimony of witnesses taken before John W. Webster, one of the masters in chancery of the said circuit court of the United States within and for the district of Colorado, under and pursuant to the order of the said circuit court of the United States, a copy of which is hereto annexed, and by stipulation of counsel in a certain cause wherein Daniel K. Tenney *et al.* are complainants and Samuel Rich, Ed. Nathan, David May, and Adolph Hirsch are defendants on behalf of the complainants this 4th day of
416 October, A. D. 1888, at my office, in the city of Denver, county of Arapahoe and State of Colorado, Mr. R. D. Thompson appearing as counsel for the complainants and Mr. A. T. Gunnell appearing as counsel for the said defendants.

ASHER HELLER, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth so far as he might be examined in regard to the matters in controversy in this suit, deposed and testified as follows:

Direct examination by Mr. THOMPSON:

Q. What is your name, age, occupation, and place of residence?

A. Asher Heller; age, twenty-five; residing now in Denver—living in Denver; occupation, salesman at Garson and Kerngoods.

Q. You are acquainted with the parties to this suit?

A. I am.

Q. What was your occupation in the months of March, April, May, and June, 1887?

A. I was in business for myself until the 30th of March—1887 I am talking of. I was first in business for myself until the 30th day of March, and in April I was *I was* with the Lion Clothing Company.

Q. Of what place?

A. Formerly Mr. Rich's place.

Q. At what place?

A. Leadville, Colorado.

Q. Did you ever see the stock of goods formerly owned by Sam. Rich, of Leadville, and which was afterwards transferred to David May and Adolph Hirsch; and, if so, when and where and how often did you see it?

A. I have seen it quite often in passing by and the last time when it was sold—in the morning of the sheriff's sale—and after that I was in the store a month or so or two months and helped Mr. Schoenberg to dispose of the goods.

Q. Who was Schoenberg?

A. The party that bought the goods at the time the sheriff sold them.

417 Q. Under what name did he carry on the business in which he used this stock?

A. Cheap John's place.

Q. How long have you been in the clothing business?

A. Well, I have sold clothing for the past ten years.

Q. Where have you livek most of that time?

A. In Leadville and Denver.

Q. Were you acquainted with the values of clothing and furnishing goods and things pertaining to that business in the spring and summer of 1887?

A. Yes, sir.

Q. What was the value of the stock of goods that was transferred by Sam. Rich to May & Hirsch about March 24th, 1887?

A. My estimation would be that the stock of goods was worth from $35,000 to $40,000.

Q. What did the stock of goods consist of?

A. Clothing, furnishing goods, hats and caps, and all wares of that kind, men's overcoats, flannels of all kinds, some trunks, I believe, and a few valises, if I am not mistaken.

Q. Did I understand you to say that you had helped to sell and dispose of the stock after it had been bought in by Schoenberg?

A. Yes, sir.

Cross-examination by Mr. GUNNELL:

Q. You are aware of the fact of some of these goods being replevied by Lowenstein and others?

A. Not at the time.

Q. After the sale you know that Lowenstein and others came in and replevied some of the goods and got them?

A. I don't know anything about that.

Q. Don't you say that you were there at the time of the sale of the goods?

418 A. Yes, sir; but the financial matters I don't know anything about.

Q. You don't understand me. You know that some Chicago parties came and replevied some of the goods from them, don't you—Lowenstein and his outfit?

A. They did not get them while I was there.

Q. I don't mean to say that they took them away. I mean to say that they replevied them—claimed that they were their goods.

A. I don't know anything about that.

Q. You included those in the estimate of the value of all the goods that Rich had on the 24th of March, 1887?

A. During the morning of the sale. I cannot recollect the day they were sold.

Q. Do you know the time of the sale?

A. Yes.

Q. Were you there at the time the sale took place?

A. Yes.

Q. Who acted as salesman?

A. One of the deputies, I believe.

Q. Corby, was it not?

A. A small, slim man; not very stout.

Q. He was deputy sheriff?

A. I believe he was.

Q. Were there many people there at the time of the sale—when it took place?

A. Yes; a good many.

Q. Pretty much all the merchants in town?

A. Yes, sir.

Q. Do you remember how the sale was made—what was done during the time of the sale?

A. Just bidding there and knocking down to the highest bidder.

Q. Do you remember the fact that in the first instance they offered them in parcels?

A. Oh, yes; they first wanted to sell the clothing separate and then the furnishing goods, and then decided to sell the whole
419 thing together. They found that in selling in parcels they would not bring so much money and they thought best to sell the whole thing in one lump.

Q. The bid on the clothing was very low, was it not?

A. No, sir; the first bid was somewhere about $12,000; the furnishing-goods bid somewhere about $7,000 or $8,000. Then they decided to sell the whole thing in a lump.

Q. How do you estimate that the goods were worth from $35,000 to $40,000; did you take an inventory?

A. No, sir; I merely judge from experience. There were quite a number of hats, etc.

Q. There were quite a number of hats?

A. Yes, sir; I found most of them to be Stetson's hats—the best kind.

Q. Do you know how many hats there were?

A. A whole side full.

Q. How long had you been in the store until that time?

A. I was in there two or three times previous.

Q. I mean how long had you been employed in the store previous to the sale?

A. Somewhere about two months.

Q. You mean previous to the sale?

A. I was not employed at all; this was before the sale took place. I was before in business for myself.

Q. You went into the store under Schoenberg?

A. Yes; immediately after he bought.

Q. Then at the time of the making of the mortgage by Rich to May and Hirsch had you ever at that time—that is, before the sale of the 24th of March, 1887—had you ever at that time examined this stock of goods to know what was in it?

A. Yes; I had been in there two or three times; looked around.

Q. Generally went in with the view of seeing what goods were handled?

A. No, sir.

420 Q. So if the mortgage was made by Rich to May & Hirsch on the 24th day of March, you at that time did not know anything about the value of the goods except in a very general way, did you?

A. Just in a general way.

Q. You did not ever know how many coats and pants and suits there were in the store?

A. Just generally.

Q. So that you would undertake to state what the value of the stock of goods was at the time of the making of the mortgage to May & Hirsch from Rich, would you?

A. Yes, sir.

Q. Some ten days before that—more than that—ten or fifteen days before you went in there to work for Schoenberg?

A. Before the sale was made?

Q. Yes; you don't know what goods were there?

A. Yes, I do. I think there was a great many goods there then that were not there after the sale was made.

Q. What makes you think so?

A. It looked to me that way; everything was thinner. I think there was more goods there then than at the time *of* the sale was made—something like $5,000. I should think at least there was more hats. I know because I went up to that store at least half a dozen times and noticed the hats were piled away up to the ceiling, and after — the hats were not there.

Q. Do you know whether there were hats in all the boxes you saw piled up to the ceiling?

A. I don't know anything about that.

Q. You don't know how many boxes were empty before the sale was made?

—. No, sir; I could not state.

Q. Then you could not state what the value of the stock was?

A. I could only state from general appearances.

421 Q. You are only telling now from the general appearances and not from any investigation you ever made. You did not investigate to find out what its value was, like you would if you were going to buy that stock, would you?

A. Yes; I would. I would size up the stock. It amounted to $40,000.

Q. If you were going to buy it you would take an invoice, would not you?

A. Yes, sir; in a matter of this amount it is hard to make estimates as to the amount of the stock. In a sale of that amount a man ought to take an inventory, as far as possible, of all the goods in the house.

Q. You didn't take any, did you, or assist in taking any?

A. No, sir.

Q. When did you quit business in Leadville?

A. The 30th day of March, 1887.

Q. Then on the 24th day of March you were working for yourself?

A. I was in business for myself.

Q. Had you ever been employed in the clothing business up to that time in Leadville?

A. Previous to that I had been four years in business in Leadville.

Q. I mean in the clothing and gents' furnishing business?

A. In Leadville?

Q. Yes.

A. Yes.

Q. Little of everything?

A. General stock.

Q. Had you up to the 30th day of March ever been in the employ of Rich?

A. No, sir.

Q. Or of Nathan & Co.?

A. No, sir.

Q. Then you never sold goods, as an employee or otherwise,
422 in this store of Rich, did you?

A. No, sir.

Redirect examination by Mr. THOMPSON:

Q. You afterwards helped to sell these goods, did you not?

A. Yes, sir.

Q. Do I understand that your estimate of the value is based on your observation and your seeing the stock prior to the time that you were employed by Schoenberg or upon what you learned in handling the stock?

A. It is my estimation after the stock was sold by the sheriff and during the time I was handling the stock.

Q. Based upon what you learned while handling it?

A. Yes, sir.

(Signed) ASCHER HELLER.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

Subscribed and sworn to before me this 26th day of December, A. D. 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

ISADORE HELLER, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth so far as he might be examined in regard to the matters in controversy in this suit, deposed and testified as follows:

Direct examination by Mr. THOMPSON:

Q. What is your name, age, occupation, and place of residence?

A. Isadore Heller; place of residence, Denver. I am at present engaged as salesman in the dry-goods business with A. Z. Salomon.

423 Q. How long have you lived in Colorado?

A. Thirteen years.

Q. Are you acquainted with the clothing and general furnishing business?

A. Yes, sir.

Q. What experience, if any, have you had in either of said businesses?

A. I have been in that business for the past thirteen years.

Q. Are you acquainted with the value of merchandise carried in such business?

A. Yes, sir; I am acquainted with the values and class of goods.

Q. Where have you been engaged in business?

A. I have been engaged in business most of the time for myself in Denver and in Leadville, and after that time I was engaged with the Lion Clothing Company and with Dave May.

Q. Did you know anything about the stock of goods originally owned by Sam. Rich and afterwards transferred to May and Hirsch about March 24th, 1887?

A. Yes, sir.

Q. What did you know about it?

A. I have seen the Sam. Rich stock almost every day previous to the sale to Schoenberg, and I was in the store at the time that the sale was made to Schoenberg.

Q. In whose store?

A. In the Lion clothing store.

Q. Is that the name under which Schoenberg did business?

A. No; that is the name under which Sam. Rich run his business—the Lion clothing store.

Q. You were working, then, for Sam. Rich?

A. No, sir; I was in business for myself, and only worked for Schoenberg after he had bought it.

Q. Did he continue in business at the old stand until August of the same year? What business were you in at that time?

424 A. At the time the sale was made, in no business at all. I had given up business.

Q. What business had you been in previous thereto?

A. I was in business for myself; in the general merchandise business; clothing and gents' furnishing business, hats and caps.

Q. When did you quit business?

A. On the 30th day of March, 1887.

Q. Did you handle this stock of goods or any part of it after the sale to Schoenberg?

A. Yes.

Q. To what extent did you handle it or see it?

A. I was general salesman there. I handled the stock. I helped to mark it over and helped to dispose of it.

Q. How long did you continue as such salesman?

A. Stayed there until the last dollar's worth of goods went out of the house.

Q. State what was the value of that stock of goods that May and Hirsch received from Rich.

A. The value of that stock after I got in it until the time that Schonberg bought it was worth, in my estimation, $40,000. The time previous to the sale I would consider that stock was worth $45,000.

Q. Why did you consider it worth more previous to the sale than after the sale?

A. Because I was well acquainted with Nathan and went in there quite often to see the stock, and I did not think that there was as much merchandise in there at the time of the sale, at the time the sale was made, as there was at the time previous to the sale.

Cross-examination by Mr. GUNNELL:

Q. What is your age, Mr. Heller?

A. Twenty-seven.

Q. You say that you have been in the clothing business for thirteen years?

A. Yes, sir.

425 Q. Most of the time for yourself?

A. Most of the time for myself.

Q. How much of the latter part of three years in business for yourself?

A. I started in business here in 1876.

Q. Here in Denver?

A. Yes.

Q. When did you go to Leadville?

A. I went to Leadville in 1880.

Q. And then did you go in business for yourself?

A. I went into the clothing business in Leadville; yes, sir.

Q. Did you ever work for anybody else in Leadville?

A. No, sir; except for Schoenberg & Co.

Q. Were you a member of the firm of Heller, Meyer & Co.?

A. Yes, sir.

Q. Heller, Meyer & Co. failed along about in March, 1887, didn't they?

A. Yes; gave up business.

Q. They failed in business, didn't they?

A. I did not say that.

Q. I ask you the question.

A. No, sir; they did not fail.

Q. How did you quit business?

A. We sold out; made an assignment.

Q. Did you make an assignment for the benefit of creditors?

A. For the benefit of creditors; yes, sir.

Q. Did you ever take an inventory?

A. Yes, sir.

Q. Of this stock of goods?

A. Yes, sir; we took an inventory after the sale was made.

Q. This is the Sam. Rich stock you mean?

A. Yes, sir.

Q. You never had worked for Sam. Rich or Nathan and Rich, had you?

A. No, sir.

Q. What made you think that previous to that time there was five thousand dollars' worth of goods more? Had you ever been in there to examine in reference to the amount of goods that was in there?

426 A. I was in that store a good deal, and previous to the sheriff's sale there was five thousand dollars' worth more of stock in that store, in my opinion. That man and I being friends, I used to go in there a good deal, and we generally noticed certain lines of goods, and after the sale I came there and did not see them.

Q. Would you at that time, from your casual notice of that stock of gooods of Rich, have advised a man to pay $40,000 for them without taking an invoice?

A. No; I should not; because a man would not want to lay down $40,000 unless he knew what he was getting.

Redirect examination by Mr. THOMPSON:

Q. Is your estimate of the market value of these goods based upon what you saw casually prior to the time that you handled the goods or based upon what you saw and learned in handling them?

A. It is based upon what I knew from handling the goods.

(Signature waived.)

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Dec. 28th, '88.

UNITED STATES OF AMERICA,
State of Colorado, County of Lake.

In the Circuit Court in and for the State and District of Colorado.

DAVID K. TENNEY *et al.*, Plaintiffs,
vs.
DAVID MAY *et al.*, Defendants.

427 It is hereby stipulated and agreed that the deposition of Isadore Heller, taken in the above matter and not signed, shall be considered and used as his deposition, and that the formality of signing the same is hereby waived, and the deposition is to be admitted and used as if complete in every part so far as the signature is concerned.

Dec. 28th, '88.

(Signed) R. D. THOMPSON,
Attorney for Plaintiffs.

(Signed) BISSELL & GUNNELL,
Attorneys for Defendants.

ED. NATHAN, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth so far as he might be examined in regard to the matters in controversy in this suit, deposed and testified as follows:

Direct examination by Mr. THOMPSON:

Q. What is your name, age, occupation, and place of residence?

A. My age is about 34; my residence is Denver, Colorado; I am a commercial traveller—a drummer.

Q. Are you acquainted with Sam. Rich?

A. I am.

Q. Have you ever had any business connections or relations with him?

A. Yes, sir.

Q. What were they?

—. In business—in the clothing business.

Q. When were you in business?

A. We were partners from 1883, I think, or 1884—from that time till the first of January, 1886.

Q. Where were you in business and what business were you in?

A. In Leadville; in the clothing business, under the name of Nathan & Co.

428 Q. What date did you dissolve?

A. The first day of January, 1886.

Q. Was there an accounting between you and Sam. Rich at that time?

A. Yes, sir.

Q. Did you know anything of Sam. Rich's business after you retired from the firm?

A. Yes; a day or so before I left there I took stock in the store.

Q. Did you see the stock at any time after you sold out?
A. Yes, sir.
Q. When?
A. I think it was in January, 1887. I was up there on a trip.
Q. Were you and Sam. Rich in the same business that Rich continued in?
A. Yes.
Q. Were you acquainted with the values of clothing and furnishing goods at Leadville?
A. Yes.
Q. What do you say was the value of Mr. Rich's stock when you saw it in January, 1887?

Objected to by counsel for defendants because immaterial and irrelevant as to what the value was so long before the sale was made or the mortgage was given.

A. From my previous acquaintance with the stock I should have considered the stock at that time to be worth about $45,000.
Q. What time in January was this?
A. I don't know the exact date.

Not cross-examined.

(Signed) ED. NATHAN.

Subscribed and sworn to before me this 27th of ——, 1888.
(Signed) JOHN W. WEBSTER,
Master in Chancery.

429 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States in and for said District.

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

The testimony of Samuel Rich, a witness produced on behalf of the petitioners in the above-entitled causes, in the matter of the petition of Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, copartners as Sweet, Dempster & Co., as per an order of this court heretofore duly made and entered of record.

Said testimony was taken before me, John W. Webster, one of the masters of said court, at the city of Denver, county of Arapahoe and State of Colorado, on the 4th day of December, A. D. 1888, R. D. Thompson, Esq., appearing for the petitioners, and A. T. Gunnell, Esq., appearing for said defendants.

And thereupon the petitioners produced SAMUEL RICH, who, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth so far as he might be examined, deposed and testified as follows:

Direct examination by Mr. THOMPSON:

—. Are you one of the defendants in these cases?
A. I am.
Q. Do you know the firm of Sweet, Dempster & Co.?
A. I do.
Q. Will you look at this bill and state whether or not that is correct and if it gives the correct date or about the correct date when the bill was contracted.
A. Yes, sir.
Q. Is that unpaid?
A. Yes, sir.
Q. It has never been paid?
A. No, sir.
Q. Did these go into your store in Leadville?
A. They did.

Account and judgment of Sweet, Dempster & Co. offered in evidence, received, and marked Exhibit A, attached to this deposition.

Q. Will you look at this account of Lewis Stein & Co.—is that correct?
A. It is correct.
Q. Does it set forth the date?
A. The goods came in before I went East.
Q. It is unpaid, is it?
A. Yes, sir.

Account and judgment and assignment of judgment of Lewis Stein & Co. offered and received in evidence and marked Exhibit B, attached to this deposition.

Q. Look at this account of S. Farwell & Co. and state if that is correct and represents the date the purchase was made.
A. Yes, sir.
Q. Did the goods go into your store?
A. Yes, sir.
Q. Is that unpaid?
A. Yes, sir; I received these goods the same as the Lewis Stein's before I went East.

Account, judgment, and assignment of judgment offered in evidence, received, and marked Exhibit C, attached to this deposition.

Q. Look at this matter of Dunlap, Lawton & Hall—is that account correct?
A. Yes, sir.
Q. And unpaid?
A. Yes, sir.

Q. Did the goods go into your store in Leadville?
A. Yes, sir.

Account—judgment contained upon same and assignment of judgment to Sweet, Dempster & Co. introduced in evidence, received, and marked Exhibit D, attached to this deposition.

Q. Will you look at this account of M. Eiseman and Brother and state if that is correct?
A. Yes; those were goods that were shipped by express.
Q. Did they go into your store?
A. Yes, sir.
Q. Unpaid?
A. Yes, sir.

Account of M. Eiseman & Bro. and assignment of same to Sweet, Dempster & Co. introduced in evidence, received, and marked Exhibit E, attached to this deposition.

Examination by Mr. A. T. GUNNELL:

Q. State whether or not before the 24th day of March, 1877, you purchased goods to the amount of $1,139 from Brown Bros. and Co.
A. Yes, sir.
Q. And you were sued and judgment had against you by Brown Bros. for that amount?
A. Yes, sir.
Q. That is a just claim, is it; you bought the goods?
A. Yes, sir.
Q. On the 24th day of March?
A. Yes, sir.

It is stipulated between counsel hereto that — all of the above matters except the matter of Eiseman & Brother attachments were issued directed to the sheriff of Lake county, Colorado, and garnishments served under said attachments upon May & Hirsch.

Q. Will you look at this account of Kitzinger, Tuholske and Frohlichstein and state if that is correct?
A. It is.
Q. Does it set forth the date?
A. It does.
Q. Those goods went into your store?
A. Yes, sir.
Q. That bill is unpaid, is it?
A. Yes, sir.

Account and assignment of same to Sweet, Dempster & Co. offered in evidence, received, and marked Exhibit F, attached to this deposition.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me this 4th day of December, A. D. 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery, U. S. Circuit Court.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States for said District.

D. K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants,

and

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

To J. W. Webster, master in chancery of said court:

Please take notice that on Friday next, the 14th instant, I will attend before you, in pursuance to the order of reference entered herein on the 30th day of August, 1888, and take testimony in support of the three petitions heretofore filed herein, true copies
433 of which have been heretofore served upon the attorneys for the respective parties.

Dated Denver, this 10th day of December, 1888.

(Signed) C. H. TOLL,
Solicitor for Petitioner-.

Testimony of witnesses taken before John W. Webster, one of the masters in chancery of the circuit court of the United States within and for the district of Colorado, under and pursuant to the notice hereto attached, in a certain cause wherein Daniel K. Tenney *et al.* are complainants and Samuel Rich, Ed. Nathan, David May, and Adolph Hirsch are defendants, on behalf of petitioners herein, this 4th day of December, A. D. 1888, at my office, in the city of Denver, county of Arapahoe and State of Colorado, Mr. R. D. Thompson appearing as counsel for complainants, and Charles H. Toll, Esq., as counsel for the defendants.

Thereupon defendants produced ALVA ADAMS as a witness in this cause, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this suit, deposed and testified as follows:

Direct examination by FRANCIS CAMPBELL, Esq.:

Q. Will you state your name, please, Mr. Adams?
A. Alva Adams.
Q. Are you acquainted with Samuel Rich, the defendant herein?
A. Yes, sir.

Q. You may state whether or not you have had any business transaction with Mr. Rich.

A. My business connections with them had been through Mr. Nat. Nathan, and it came through my endorsing a note, in the first place, for—I think the money was for Mr. Rich and Mr. Nathan—which note was not paid by them, and I paid it.

434 & 435

Q. Has that money ever been repaid to you?

A. No, sir.

Q. What evidence do you hold now of that claim, if any?

A. All the papers have been turned over to Mr. Toll.

Q. You may state what that paper is which I now show you.

A. This is an assignment of the claim of Nat. Nathan's to me.

Q. For what amount?

A. Twenty-five hundred.

Q. State what consideration was paid by you for that assignment or received by Mr. Nathan.

A. Mr. Nathan owes me various amounts; just the amount I don't know. One consideration was this note and interest, which amounts to—of course, this will be an estimate—twelve or thirteen hundred dollars, and then other claims I have against him aggregating as much more; these I can't tell without going to my books.

Q. Can you state, Mr. Adams, of whom the firm of Nathan and Company was composed, against whom this claim has been assigned to you by Nat. Nathan?

A. My understanding is that it was Ed. Nathan and Mr. Rich here, but I have been told that Nat. Nathan was also a member, but that I don't know. It has always been told to me that Mr. Rich and Ed. Nathan were members of the firm.

Mr. CAMPBELL: I offer in evidence this assignment of claim.

(Assignment marked Exhibit "A.")

Mr. THOMPSON: We object to that claim. My first objection to the claim is that it is a claim not against Sam. Rich individually.

My second objection is that if Samuel Rich was a member — Nathan and Company it has not been sufficiently shown.

436

My third objection is that the claim has been held by Governor Adams only since November 5th, 1888; that prior to that time it was owned and held by Nat. Nathan.

Q. You may state, Governor, what that paper is I now show you.

A. It seems to be a note for $1,000 given by Samuel Rich and Ed. Nathan.

Q. Dated when?

A. December 31st, 1885, Leadville.

Q. You may state the endorsement thereon.

A. Endorsed Ed. Nathan.

Q. Are you now owner and holder of that note?

A. This note, I think, was in my hands as part security for the money that I endorsed for them. That is my recollection of it.

Q. Does the firm of Nathan & Co. or Mr. Samuel Rich, the defendant, individually owe you now the amount of money in excess of this note and the claim which has been assigned to you and offered in evidence?

Mr. THOMPSON: We object to that question because it is a double question.

A. No; I don't think they owe me in excess of that amount.

Q. How much is now owing to you from them?

A. I should think it would be somewheres upwards between from two to three thousand dollars. Of course, I wish to explain here my dealings have been with Mr. Nat. Nathan almost entirely.

Q. I wish you to state now if you are now owner of that note and holder of it.

A. This note was given to me at the time I signed another note for one thousand dollars. That note was deposited in the Western National bank, I think, in Pueblo, and the money was paid upon it, and this note was brought to me at that time—that is, I suppose it was the same note. It was one for the same amount, signed
437 by Mr. Rich. I couldn't identify the note.

Q. Has any portion of these claims or either of them been paid to you?

A. No, sir.

Mr. CAMPBELL: I offer the note in evidence which has been identified.

(Note marked Exhibit "B.")

Cross-examination by R. D. THOMPSON, Esq.:

Q. Governor Adams, when did you receive this note?

A. The note was brought to me by Nat. Nathan at the time I signed the note in the Western National bank. I don't know the date.

Q. Do you know if the note had matured at the time you received it?

A. I don't remember. At the time I didn't attach much importance to this note.

Q. Do you recollect the time when you went your security for Nat. Nathan?

A. No; I would have to go to the bank to find the exact date. I can tell when I paid it.

Q. But you don't know when you received this—whether before or after maturity?

A. No; I want to correct one statement: that it was not at the Western National bank that the money was obtained, but of a man named Mr. Kitchen, of Pueblo.

Q. Governor Adams, this Exhibit "A," which purports to be an assignment by Nat. Nathan to you of all claims and demands against the firm of Nathan & Co., and especially of this claim

against the firm of Nathan & Co. against Sam. Rich, $2,500, was not transferred to you until or not made until November 5th, 1883.

A. No, sir; I think so.

Q. Under what circumstances did you receive it at that time?

Objected to by Mr. Campbell as not proper cross-examination.

438 A. I just simply state the claim was made over to me to secure me for moneys Nat. Nathan owed me; that is the sum and substance of the whole thing.

Q. Do you know for what these claims which purport to be assigned by this written assignment consisted of?

A. I know nothing about them at all. Mr. Nathan said that he had certain claims against this estate or different defendants and wished to assign them to me, so that I would be secure for what he owed me. Just what amount that is I don't know, that he owes me.

(Signed) ALVA ADAMS.

Subscribed and sworn to before me this 26th day of December, A. D. 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Thereupon defendants produced SAMUEL RICH as a witness in this cause, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this suit, deposed and testified as follows:

Direct examination by Mr. CAMPBELL:

Q. Will you look at this paper marked Exhibit "A" and state of whom the firm of Nathan & Co. therein referred to was composed?

A. Ed. Nathan and Samuel Rich; that is myself.

Q. You may state, if you know, the circumstances attending the origin of the claim therein referred to.

A. The circumstances of this claim was that at the time
439 when Nat. Nathan gave us that check we was hard up and he loaned us that money.

Mr. THOMPSON: I want to object here to this form of examination, because the claims are not here and the matters about which the witness is speaking cannot be identified in such a way as to make the testimony intelligible.

Counsel for petitioners states that the assignment shows the claim referred to is for money loaned, $2,500, by Nat. Nathan to the firm of Nathan & Company.

Q. About what date was that, Mr. Rich?

A. Well, that was the date in 1883; that is the time when Nathan Brothers dissolved.

Q. About what time in 1883, as nearly as you can fix it, was it that Nat. Nathan loaned your firm the $2,500 referred to?

A. It was either *was* in March or April. I don't remember the exact time. It was somewheres that time.

Q. Of whom was the firm of Nathan & Co. composed at that time?

A. Ed. Nathan and myself.

Cross-examination by Mr. THOMPSON:

Q. Mr. Rich, did the loan of $2,500, which you have mentioned as having been made in 1883, come from Nat. Nathan to the firm of Nathan & Company, or was it from the firm of Meyer & Nathan?

A. No, sir; it was from the firm of Nathan & Company.

Q. Will you look at the check marked "Exhibit C," dated June 13th, 1883, signed by Meyer & Nathan, payable to Ed. Nathan or order, for the sum of $2,500, on the First National Bank of Las Vegas, and tell me whether or not that has any connection with the loan that you have just testified about?

A. Yes, sir; this is the check which we received that time.

Q. Now, state why it is signed Meyer & Nathan and not Nathan & Co.

440 A. The firm at that time—Nat. Nathan was in partnership with Billy Meyer in the cattle business, and he gave us that check on their firm signed "Meyer & Nathan." That firm was in existence as a partnership—Billy Meyer and Nat. Nathan. He could not draw a check on himself, and he gave it on the firm.

Q. Then the indebtedness of Nathan & Company was owing to Meyer & Nathan and not to Nat. Nathan?

A. No; it was to Nat. Nathan individually. He charged that after awhile to himself, but the check had to be drawn on the firm.

Q. But that check, Mr. Rich, is payable to the order of Ed. Nathan and not to the firm of Nathan & Company?

A. Yes, sir; but the money was used by the firm.

Q. But the money was, in fact, then paid to Ed. Nathan, was it not?

A. Ed. Nathan turned it over to the firm. We used the money for the business, because Ed. Nathan had no use at that time for that amount of money, only for the business.

Mr. THOMPSON: Mr. Adams, I want to introduce that in evidence. Marked Exhibit "C."

Q. Didn't Nat. Nathan afterwards become your partner?

A. No, sir.

Q. This check that I have just shown you is the paper on which the money was obtained, the claim of which is assigned to Governor Adams, isn't it?

A. Yes, sir.

Q. That check was given for a partnership matter of Ed. Nathan & Company or Nathan & Company, rather, and not for an individual matter of your own?

A. It was given for a loan.

Q. But I mean not for an individual matter of your own?

A. No; it was given for the partnership.

441 Redirect examination:

Q. Can you, by referring to the check which has been offered in evidence by the plaintiff, state accurately the time when the firm of Nathan & Company received the $2,500?

A. Well, they gave us that check and we deposited it in the bank on the firm and the bank sent it to the bank at Las Vegas for collection.

Q. When did the firm of Ed. Nathan and Company get that money?

A. As soon as collected in Las Vegas.

Q. State the date.

A. I can't state the date.

Q. But nearly? Look at the check.

A. June 18th, 1883, we got credit for it in our bank.

Q. You may state, if you please, Mr. Rich, what agreement was made between yourself and Ed. Nathan upon the dissolution of the firm of Nathan & Company with regard to the liability of the firm.

A. That the firm shall pay all the liabilities—that I shall pay all the liabilities the firm owes. That was our agreement.

Q. When did that dissolution occur and when was that agreement made?

A. It was in January the first, 1886—in the spring of 1886. It was somewhere there.

Recross-examination:

Q. Mr. Rich, have you the books of account kept by the firm of Nathan & Company?

A. No; Dave May has got it. The books was all left in the safe when the store was turned over. Everything was left there.

Q. Mr. Rich, the endorsement on this check shows that the check was never endorsed by the firm of Nathan & Company. Can
442 you state from your recollection as to whether or not—or I mean as to just how this transaction was entered upon the books of Nathan & Company?

A. Well, I know so much. When he gave us that time that money to go in that business he made the loan to us and this money went to the business.

Q. Was this the time that you were just starting in business?

A. Yes, sir.

Q. Isn't it a fact that this money, then, was money that Ed. Nathan was to contribute to the firm?

A. Yes; he put it in the firm. We got it in the bank as soon as the money was collected; in fact, the money was credited to us before the check was collected.

Q. Isn't it a fact, though, that this money was loaned to Ed. Nathan so that Ed. might put it in the firm as contributed?

Objected to by Mr. Campbell as incompetent, irrelevant, and immaterial.

A. No, sir; this was the amount he gave us in the business for a

loan. He often made the remark at the time. I remember when he gave us the money he said if we can afford to pay interest on it, all right; if not, he was satisfied to get back the principal.

Q. Don't this check appear upon the books of the firm of Nathan & Company as so much capital stock contributed by Ed. Nathan to the firm?

A. No, sir.

Q. What did Ed. Nathan contribute to the firm of Nathan & Company?

Objected to as not proper cross-examination.

A. Well, he had business down in the Southern country and he had so much goods that he put in the concern.

443 Q. Do you know what they amounted to?

A. I don't know; I can't think of it to-day; eight or ten thousand dollars.

Q. Isn't it a fact that part of the indebtedness that is included in the claims in this action was contracted by the firm of Ed. Nathan & Company, or rather the firm of Nathan & Company, while Ed. Nathan was a partner?

A. Of which claims?

A. In the complaint in this bill here.

Objected to as not proper cross-examination under this petition.

Q. How long did you and Ed. Nathan continue in business?

A. About four years.

Q. When did you dissolve?

A. In 1886. Well, it was in December, 1885.

Q. At the time of the dissolution wasn't the firm of Nathan & Company, which was composed of you and Ed. Nathan, largely indebted?

A. Yes, sir.

Q. You as-umed that indebtedness, did you not?

A. I did; yes, sir.

Q. And part of that indebtedness that you so assumed is included in the judgments which are set forth in this bill or petition, do-sn't it?

A. Yes, sir.

Q. Was there ever any note given by the firm of Nathan & Company for this money borrowed of Nat. Nathan?

A. No, sir.

Q. Was any part of it ever paid?

A. No, sir.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me this 26th day of December, A. D. 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

444 Thereupon defendants produced ED. NATHAN as a witnsss in this cause, who, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in -his suit, deposed and testified as follows:

Direct examination by Mr. CAMPBELL:

Q. Can you state how that check come to be payable to the order of Ed. Nathan if the money was intended as a loan to Nathan & Company?

A. Yes, sir; when Nat. Nathan came up to Leadville him and I went in partnership under the firm of Nathan Brothers, and after we dissolved I says, "Nat., I need some money." I says, "We have got some notes to meet," and I says, "If you have got any money I wish you would let me have it," and he says, "Well, I can let you and the boys have some money now, but I would like to have you pay it back as soon as possible." I says, "How much can you let me have?" and he says, "I can let you have $2,500; have just sold some cattle down at Las Vegas," and he made the check out payable to Ed. Nathan for this twenty-five hundred dollars. Now I can explain to you just exactly how this came up.

Q. When did you have this conversation?

—. Some time in June; it was when this check was dated; this is dated June 13.

Q. Who composed the firm of Nathan & Company at that time?

A. Sam. Rich and Ed. Nathan.

Q. Did you at that time ask him for the loan for Nathan & Company?

A. Yes, sir.

445 Q. And did Nathan & Company receive the money?

A. Yes, sir.

Q. When?

A. I will just tell you exactly when they received the money: that same day, I think, I went and deposited this check in the bank—the First National Bank of Leadville—placed to the credit of Nathan & Company.

Q. In their account with the bank?

A. Yes, sir.

Cross-examination by Mr. THOMPSON:

Q. Why was this check not made payable to Nathan & Company instead of to you individually?

A. That I don't know, Mr. Thompson. Him and I was talking together. Sam. Rich was (at Pueblo) and he probably made it out to Ed. Nathan.

Q. Do you know what date that partnership with Sam. Rich was formed?

A. I don't know exactly; this check was given when Mr. Rich and I went into partnership in the firm of Nathan & Company; but

I can explain this to you, this being signed and endorsed to the bank under the name of Ed. Nathan.

Q. Well, explain it.

A. *A.* I always did the book-keeping up there and did the banking business; went to the bank; had dealt through them before. I had several outside deals up there whereby checks were made payable to me instead of the firm, and where a check had to be deposited in bank I always signed just as it was made payable in the face of the check and put them right in and I probably had my slip made out to Nathan & Company and put them in the bank just that way.

Q. Isn't it a fact that when the firm of Nathan & Company deposited checks that your bank required of the firm to endorse
446 the same in the firm name?

A. No, sir.

Q. At what bank did you deal?

A. When this went on we was dealing with the First National.

Q. At what place?

A. Leadville.

Q. Did you know of certain notes endorsed by Nat. Nathan that were transferred by Sam. Rich to May & Hirsch in this case?

Objected to by Mr. Campbell as not proper cross-examination on this issue.

A. No, sir; I don't know anything about it.

Q. With Nat. Nathan's name about it?

A. No, sir.

Q. Do you know of any notes transferred by Sam. Rich to the Bank of Leadville, with Nat. Nathan's name on it?

A. I do not, sir.

Q. What does this Nat. Nathan do?

Objected to as not proper cross-examination.

A. I think that he lives in the San Luis valley.

Q. Said to be in cattle business?

A. Said to be; yes, sir.

(Signed) ED. NATHAN.

Subscribed and sworn to before me this 24th day of December, 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Thereupon Mrs. RACHAEL NATHAN, a witness on behalf of the defendants, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth concerning the matters in controversy in this suit, testified and deposed as follows:

Direct examination by Mr. CAMPBELL:

447 Q. State your name, if you please.

A. Rachael Nathan.

Q. Do you know Samuel Rich, the defendant herein, and one Edward Nathan?

A. Well, that was my son-in-law—Mr. Rich.

Q. Do you know whether they were engaged in business together in partnership at any time?

A. That I can't tell.

Q. You don't know whether they were doing business together or not?

A. I think they was.

Q. Do you understand English very readily?

A. Yes, sir; I understand English.

Q. Did you ever loan any money to the firm of Nathan & Company?

A. Yes, sir; when my husband was living; at that time. It was my money that I loaned it and my husband was satisfied to give him.

Q. (Handing witness paper.) When did you lend them any money?

A. I can't read English.

Q. Where did you get the money?

A. From Kountze.

Q. The Mr. Kountze you refer to is the president or officer of the Colorado National bank?

A. Yes.

Q. How much money did you loan them at that time?

—. $3,500.

Q. Of whom was the firm then composed?

A. Rich & Nathan—Ed. Nathan.

Q. By Rich you mean Sam. Rich?

A. Sam. Rich.

Q. The defendant in this case?

A. Yes, sir.

Q. Can you recollect the time when this loan took place?

A. I think Kountze will know.

Mr. CAMPBELL: I will state that the lady cannot read English, and I have the note here which was discounted at the bank January 29th, 1884, upon which the $3,500 was raised.

Mr. THOMPSON: What has that to do with it?

448 Mr. CAMPBELL: Simply to fix the date.

Q. Do you recollect now if that was the date when the firm got the money?

A. Can I remember it?

Q. Yes.

A. Of course I do.

Q. You have since paid this note to the bank, have you?

A. No; I got money at that time in the bank, and I took money from there.

Q. Have you since paid this note to the bank?

A. Yes, sir; I got money before I got that money. I got at that

time eight thousand five hundred, and I took thirty-five hundred from Kountze.

Q. Has any portion of this loan been paid to you by Nathan & Company?

A. By Nathan & Company you mean Mr. Rich?

Q. Either of the firm.

A. Some interest, but no capital; when my husband was living; at that time, maybe; it was for a year you paid interest.

Q. No portion of the principal of $3,500 has been paid to you?

A. No; only one year they paid the interest, and then when my husband died I think I never received anything; maybe I did for some month, but I can't remember. It must be five years since—four years since father died.

Q. By some money you mean that they may have paid you for one or two months' entire interest?

A. Interest; but I can't remember, of course, when my husband died; I was in trouble, and I can't remember if I received for a month or so; I can't remember. I have a witness—my sister, Mrs. Sands—that knows that I loaned it to them.

449 Cross-examination by Mr. THOMPSON:

Q. This money, Mrs. Nathan, was loaned to the firm of Nathan & Company, not to Mr. Sam. Rich?

A. To Mr. Sam. Rich and Nathan.

Q. They were then partners as Nathan & Company?

A. Yes, sir.

Q. Why didn't you take a note for it?

A. Because my daughter was living at that time, and she was contented with my son to take the money, and I didn't care to take a note for it because they told me they would pay me.

Q. To whom did you give the money?

A. I think we sent a check to the bank from Kountze. Mr. Rich got it, I heard.

Q. For how long a time was the money to be loaned?

A. It was set no time at all, but when they had money they would pay us, and when my husband was living they paid interest, and then when he died—and then a year after my daughter died.

Q. Did you sign the check yourself and draw the check that they got?

A. I took it from Kountze. I can't remember so many years whether Rich took it or I took it.

Q. Did you hand it to them in money or by check?

A. By check, from Kountze, because it was paid by some note.

her
(Signed) RACHAEL x NATHAN.
mark.

Witness to mark:

(Signed) JOHN W. WEBSTER, *Master.*

Subscribed and sworn to before me this 24th day of December, 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Mr. CAMPBELL: I will now offer in evidence, in support of the claim of Mrs. Henrietta Metcalf, this note (same is
450 marked Exhibit "D"). The note reads as follows:

"$1,300.00. LEADVILLE, *November 25th*, 1886.

Nine months after date we promise to pay to the order of Mrs. H. Metcalfe thirteen hundred dollars, at Leadville, Colorado, value received.

SAM. RICH.
ED. NATHAN."

(Endorsements:) "Received $26.00, interest on note to Dec. 25th, 1886. Mrs. H. Metcalfe. Received interest in full up to date, March 25th, 1887. Mrs. H. Metcalfe."

Mr. THOMPSON: We object to that because the amount is below the jurisdiction of this court.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

UNITED STATES OF AMERICA, *State and District of Colorado,* } *ss:*

In the Circuit Court of the United States for said District.

D. K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

To R. D. Thompson, solicitor for said complainants; to Bissell and Gunnell, solicitors for said defendants May & Hirsch, and to
451 said Samuel Rich:

Take notice that on the 8th day of November, 1888, at the hour of ten o'clock a. m., I shall appear before John W. Webster, the master to whom this cause stands referred, at his office, room No. 10, in the McClintock block, No. 1605 Latimer street, in the city of Denver, and take testimony in the support of the peti-ion heretofore filed herein by Charles E. Frankenthal *et al.*, of which a copy is hereto annexed.

Said petition is filed and said testimony will be taken pursuant to the provisions of the order entered herein dated Aug. 30th, 1888.

(Signed) I. E. BARNUM,
Solicitor for Petitioners.

Dated Denver, Col., Nov. 2, 1888.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Henry C. Tenney, being first duly sworn, deposes and says that he duly served the annexed notice and the petition of Fruedenthal therein referred to upon R. D. Thompson, the solicitor for the complainants, by delivering to and leaving with him, at his office, in the city of Denver, Colorado, on the 2nd day of November, 1888, a true copy of said notice and petition; that on the same day, at Denver, Colorado, deponent served said notices and petition upon said Samuel Rich by delivering to and leaving with him a true copy thereof.

That on the same day deponent served said notice and
452 petition upon said Bissell and Gunnell, the solicitors for said May & Hirsch, by depositing in the post office at Denver a true copy of said notice and petition, enclosed in a sealed wrapper, directed to them at Leadville, Colorado, that being there reputed place of residence, the postage thereon being paid by deponent.

(Signed) HENRY C. TENNEY.

Subscribed and sworn to before me this 8th day of November, 1888.

[NOTARIAL SEAL.] (Signed) CHAS. C. BUTLER,
Notary Public.

My commission expires 3, 17, '92.

In the Matter of the Petition of CHAS. E. FRANKENTHAL *et al.*

Be it remembered that, pursuant to the notice hereunto annexed and on the 8th day of November, at my office, in the city of Denver, county of Arapahoe and State of Colorado, before me, John W. Webster, one of the masters in chancery in and for the said circuit court of the United States, appointed and commissioned to administer oaths, etc., etc., personally appeared Samuel Rich, a witness produced on behalf of claimant in the above-entitled action now pending in the said court, who, being first by me duly sworn, waw then and there examined by Henry C. Tenney, counsel for the claimant, and testified as follows:

453 In the Matter of the Petition of CHAS. E. FRANKENTHAL *et al.* to be Made Parties in Above-Entitled Action.

And thereupon, in order to substantiate above claim, the said Frankenthal produces SAMUEL RICH, a witness of lawful age, who, being by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matter in controversy, deposes and testifies as follows:

Q. State your name, age, and place of residence.

A. Samuel Rich; age, forty-three years; residence, Denver, Colorado.

Q. Are you the defendant in the within action?

A. Yes, sir.

Q. Are you acquainted with the petitioners, Chas. E. Frankenthal, Joseph Freudenthal, and Henry Adler?

A. I am.

Q. State whether you purchased any goods of them on or about the 28th day of February, 1887.

A. I did.

Q. State, of you know, what was the value of the goods which you then purchased.

A. Eleven hundred forty dollars and sixty cents.

R. D. Thompson, counsel for the complainants, moves to strike out all of the above testimony on the ground that the amount of the above claim is less than two thousand dollars, and therefore not sufficient to give this court jurisdiction.

454 Q. Of what did those goods consist, and when and where did you receive them?

A. The goods consist of gentlemen's furnishing goods. I received them at Leadville, Colorado, prior to the twenty-fourth day of March, 1887.

Q. Did you ever pay for those goods or any part thereof?

A. No, sir.

Q. State, if you know, whether plaintiff ever obtained judgment against you; and, if so, in what court.

A. Yes; in the county court of Lake county.

Q. State whether you ever paid that judgment or any part of it.

A. No, sir.

Q. State, if you know, where the petitioners reside.

A. All in Chicago, State of Illinois.

The petitioners offer in evidence paper hereto attached and marked Exhibit "A" and purporting to be a certified copy of a judgment in favor of said petitioners and against said defendant Samuel Rich, rendered in the county court, Lake county, Colorado, on the 19th day of April, 1887.

R. D. Thompson, for the complainants, objects to the admission of the exhibit offered on the ground that the amount of the above claim is less than two thousand dollars, and therefore not sufficient to give this court jurisdiction.

Q State whether the indebtedness that is described in the judgment is the same which you have described above.

A. It is the same.

(Signed) SAMUEL RICH.

Subscribed and sworn to before me this 8th day of November, A. D. 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

455 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, John W. Webster, a master in chancery in and for said court, do hereby certify that the witness, Samuel Rich, in the foregoing deposition named was by me duly sworn to testify the truth, the whole truth, and nothing bu- the truth; that said deposition was taken at the time and place mentioned in the annexed notice, to wit, at my office, in city of Denver, county of Arapahoe, in the State of Colorado, and on the 8th day of November, A. D. 1888, between the hours of ten o'clock and 11 o'clock a. m. of that day; that said deposition was reduced to writing by my order and in my presence, and when completed was by me carefully read to said witness and, being by him corrected, was by him subscribed in my presence; attached to deposition is document marked by me "Exhibit A," which is to be considered part.

In witness whereof I have hereunto subscribed my name this eighth day of November, 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Master's Fees.

Taking foregoing testimony 1 day, 12 fo's @ 20 ..... $5 40

Received pay't of H. C. Tenney, Esq.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

456 EXHIBIT "A." John W. Webster, Master in Chancery.

Transcript of Judgment.

UNITED STATES OF AMERICA.

STATE OF COLORADO, } ss:
Lake County, }

In County Court, March Term, A. D. 1887.

Pleas before the Honorable Geo. S. Phelps, judge of the county court of Lake county, in the State aforesaid, and at a term thereof begun and holden at the court-house, in the city of Leadville, in said county, on the 1st Monday (being the 7th day) of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and ——.

Present: Honorable Geo. S. Phelps, judge of the county court, Lake county, in the State of Colorado; T. A. Dickson, Esq., district attorney; J. A. Lamping, Esq., sheriff; Geo. S. Phelps, Esq., clerk.

4464.

Be it remembered, to wit, that heretofore and on the 19th day of April, 1887, the same being one of the days of the March term, A.

D. 1887, of said county court, the following proceedings *inter alia* were had and entered on record, to wit:

CHAS. E. FRANKENTHAL, JOSEPH FREUDENTHAL, and Henry Adler, Copartners under the Firm Name of Frankenthal, Freudenthal & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant. } Attachment.

457 And now, on this day, comes the plaintiffs, by their attorney, J. S. Jones, Esq., no one appearing for the defendants.

And thereupon plaintiff, by attorney, enters his motion for a default herein, both as to the attachment and merits of this action.

And it appearing to the court from the summons and writ of attachment issued herein and the return thereon endorsed that the defendant has been duly and personally served in Lake county with both said summons and writ;

And it further appearing to the court that said defendants has failed to plead, answer, or demur to plaintiffs' complaint filed herein, although the time within which so to do has long since expired;

And it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein as required by law:

It is therefore ordered by the court that said motion be sustained, and that the default of said defendant, both as to the attachment and to the merits of the action, be, and the same is hereby, entered of record.

And thereupon this cause comes on for hearing and trial, a jury being waived, and the same being submitted to the court, and the court, having heard the evidence adduced, doth find that the defendant is indebted to the plaintiff- as alleged in the complaint herein, and doth assess plaintiffs' damages at the sum of thirteen hundred and seventy-three & $\frac{35}{100}$ dollars, $1,373.35.

458 It is therefore considered, ordered, and adjudged by the court that said plaintiffs, Chas. E. Frankenthal, Joseph Fruedenthal, and Henry Adler, copartners under the firm name of Frankenthal, Freudenthal & Co., do have and recover of and from the defendant, Samuel Rich, the said sum of thirteen hundred seventy-three & $\frac{35}{100}$ dollars, $1,373.35, their damages aforesaid assessed, together with their costs her-in about this suit expended, and that they have execution therefor.

And it is further ordered that the attachment herein be, and the same is hereby, sustained; and it is further ordered that this cause stand continued as to the garnishee herein.

I, Geo. S. Phelps, judge and acting clerk of the county court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the order of default and the final judgment in a certain cause lately pending in said court wherein Frankenthal, Freudenthal & Co. were plaintiffs and Samuel Rich was defendant, as the same appears of record in my office.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court, at Leadville, this 25th day of October, A. D. 1888.

(Signed) GEO. S. PHELPS,
Judge and Acting Clerk.
F. E. PURPLE,
Deputy Clerk.

(Indorsed:) 4464. Transcript of judgment. County court. In the matter of Frankenthal, Freudenthal & Co. *vs.* Samuel Rich. Fees, $2.50. Please remit to Geo. S. Phelps, Co. judge. P-id. Geo. S. Phelps.

459 EXHIBIT A (Claimants'). John W. Webster, Master in Chancery.

For value received, I hereby sell, assign, transfer, and set over to Alva Adams all claims and demands against the firm of Nathan & Company and against S. Rich, and especially my claim against said firm and against said Rich for twenty-five hundred dollars, with interest thereon from June 18th, 1883, for twenty-five hundred dollars loaned and advanced to the firm of Nathan and Company on or about June 18th, 1883, with interest thereon from the 18th day of June, 1883.

Dated Nov. 5th, 1888.

(Signed) NATHANIEL NATHAN.

(EXHIBIT "B") Claimant's. (Signed) John W. Webster, Master in Chancery.

No. —. Due —. LEADVILLE, *Dec.* 31*st*, 1885.

Four months after date I promise to pay to the order of Ed. Nathan one thousand dollars, at Carbonate bank, Leadville, Colorado, value received.

(Signed) SAMUEL RICH.

(Stamp:) The Carbonate bank, Leadville, Colorado. 15680. Colorado Nat. bank, Denver. No. 10364.

(Indorsed:) Exhibit "B." John W. Webster, master in chancery. Ed. Nathan says he has written and returns.

(EXHIBIT "C") Claimant's. (Signed) John W. Webster, Master in Chancery.

LAS VEGAS, N. M., *June* 13, 1883.

First National Bank

Pay to Ed. Nathan or order twenty-five hundred dollars, $2,500.00.

(Signed) MEYER & NATHAN.

(Stamp:) First National bank, Las Vegas, N. M. June 18, 1883.

460 (Indorsed:) John W. Webster, master in chancery. For returns as advised. C. B. McVaylor. Pay C. B. McVayley or order, for collection and account of First National Bank of Leadville, Colo. O. M. Webster, cashier. Pay to the order of First National Bank of Leadville. (Signed) Ed. Nathan.

EXHIBIT D.

Dollars $1,300.00. LEADVILLE, *Nov.* 25, 1886.

Nine months after date we promise to pay to the order of Mrs. H. Metcalfe thirteen hundred dollars, at Leadville, Colorado, value received.

Due —.

(Signed) SAM. RICH.
ED. NATHAN.

(Exhibit D) Claimants'. (Signed) John W. Webster, master in chancery.

(Indorsed:) Exhibit D. John W. Webster, master in chancery. Receeived $2,600, interest on note to Dec. 25th, 1886. (S'g'd) Mrs. H. Metcalfe. Received interest in full up to date, March 25th, 1887. (S'g'd) Mrs. H. Metcalfe.

EXHIBIT "A."

945. *Monthly Statement.*

CHICAGO, ILL., 10, 9, 1888.

Mr. Sam. Rich, Leadville, Colo., to Sweet, Dempster & Co., 220 & 222, Monroe street, Dr.

Feb. 26.	4–1, for merchandise, as per bill	$922 50
28.	----------	12 00
		934 50

We will be obliged to make sight draft for above amount if not paid by—

SWEET, DEMPSTER & CO.

461 Diligent Creditors' Agency, J. B. Gascoigne, manager; Flower, Reimy & Holstein, attorneys, First National Bank building, Chicago.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Charles Hutchinson, being duly sworn, deposes and says that he is a member of the firm of Sweet, Dempster & Co., composed of Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and An-

drew W. Mitchell; that S. Rich is justly indebted to said Sweet, Dempster & Co.
(debtor's name) (creditor's name)
for goods, wares, and merchandise heretofore sold and delivered by said Sweet, Dempster & Co. to S. Rich between the 25th day of February, 1887, and the 29th day of February, 1887, at his special instance and request; that the statement of account hereto annexed, marked "Exhibit A," is a just and true statement of the goods so sold and delivered and of the true value of the same; that no payments have been made except as shown upon said bill, and that there is justly due from said S. Rich
(debtor)
to said Sweet, Dempster & Co. upon said account the sum of nine hundred thirty-four and $\frac{50}{100}$ dollars over and above all payments, set-offs, counter-claims, allowances, and discounts, together with interest thereon at the rate of 8 per cent. per annum from the 28th day of April, 1887, and that said Sweet, Dempster & Co. is entitled to recover from S. Rich said sum of nine hundred thirty-four and $\frac{50}{100}$ dollars, together with interest thereon as aforesaid.

(Signed) C. HUTCHINSON.

Subscribed and sworn to before me this 9th day of October, 1888.

(Signed) DAN. H. DONOVAN,
[SEAL.] *Notary Public.*

462 (EXHIBIT A.) John W. Webster, Master in Chancery.

Transcript of Judgment. 2400.

UNITED STATES OF AMERICA.

STATE OF COLORADO, } *ss:*
Lake County, }

In County Court, March Term, A. D. 1887.

Pleas before the Honorable Geo. S. Phelps, judge of the county court of Lake county, in the State aforesaid, and at a term thereof begun and holden at the court-house, in the city of Leadville, in said county, on the first Monday (being the 7th day of March) in the year of our Lord one thousand eight hundred and eighty-seven and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Geo. S. Phelps, judge of the county court, Lake county, State of Colorado; Joseph A. Lamping, sheriff.

Be it remembered, to wit, that heretofore and on the 26th day of April, 1887, the same being one of the regular juridical days of the March term, A. D. 1887, of said county court, the following proceedings *inter alia* were had and entered on record, to wit:

SAMUEL H. SWEET, WESLEY DEMPSTER, CHARLES Hutchinson, and Andrew W. Mitchell, Copartners Doing Business under the Firm Name and Style of Sweet, Dempster & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	Attachment. 4467.

And now, on this day, come the plaintiffs, by their attorney, William H. Nash, Esq., no one appearing for the defendant.

463 And thereupon plaintiffs, by attorney, enter their motion for a default herein against the defendant both as to the attachment and merits of this action.

And it appearing to the court from the summons and writ of attachment issued herein and the return thereon indorsed that the defendant has been duly and personally served in Lake county with both said summons and writ; and it further appearing to the court that said defendant has failed to plead, answer, or demur to plaintiff's complaint filed herein, although the time within which so to do has long since expired; and it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein assigned by law:

It is therefore ordered by the court that said motion be sustained, and that the default of said defendant both as to the attachment and the merits of this action be, and the same is hereby, entered of record.

And thereupon this cause come on for hearing and trial, a jury being waived and the same being submitted to the court, and the court, having heard the evidence adduced, doth find that the defendants is indebted to the plaintiffs as alleged in the complaint herein, and doth assess plaintiffs' damages at the sum of nine hundred thirty-four & $\frac{50}{100}$ dollars, $934.50.

It is therefore considered, ordered, and adjudged by the court that said plaintiffs, Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, copartners doing business under the firm name and style of Sweet, Dempster & Co., do have and recover of and from the defendant, Samuel Rich, the said sum of

464 nine hundred thirty-four and $\frac{50}{100}$ dollars, $934.50, their damages aforesaid assessed, together with their costs herein about this suit expended, and that they have executions therefor; and it is further ordered that the attachment herein be, and the same is hereby, sustained.

And it is further ordered that this cause stand continued as to the garnishees herein.

(Signed) GEO. S. PHELPS,
County Judge.

Be it remembered that afterwards and on, to wit, Thursday, May 5th, A. D. 1887, being one of the regular juridical days of the May term, A. D. 1887, of said court, the following other proceedings were had and made and entered on record in said cause, to wit:

SAMUEL H. SWEET, WESLEY DEMPSTER, CHARLES Hutchinson, and Andrew W. Mitchell, Copartners Doing Business under the Firm Name and Style of Sweet, Dempster & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	Attachment. 4467.

And now, on this day, comes the plaintiff-, by W. H. Nash, Esq., and at the same time A. T. Gunnell, Esq., one of the attorneys for David May and Adolph Hirsch, garnishees herein.

And thereupon, by agreement of parties, it is ordered by the court that ten days, after filing of other and absolute answer by the garnishee herein, be given plaintiffs to plead to or traverse
465 such answer.

(Signed) GEO. A. PHELPS,
County Judge.

I, Geo. S. Phelps, judge and clerk of the county court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of judgment entry and orders had, made, and entered of record in a certain cause pending in said court on the — side thereof, wherein Samuel H. Sweet, Wesley Dempster, Charles Hutchinson, and Andrew W. Mitchell, doing business under the firm name and style of Sweet, Dempster & Co., were plaintiffs and Samuel Rich was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of this court, at Leadville, this 24th day of November, A. D. 1888.

[SEAL.] (Signed) GEO. S. PHELPS,
Judge & Clerk of the County Court, Lake County, Colorado.

(Indorsed :) Transcript of judgment. County court, Lake county. March & May terms, 1887. In the matter of Sweet, Dempster & Co. *vs.* Samuel Rich. No. 4467. Fees, $2.50; p'd by plaintiff-.

CHICAGO, *Jan.* 27, 1887.

Mr. Samuel Rich, Leadville, Colo., bought of Louis Stein &
466 Co., April 1st, jobbers of hats, caps, and gloves, 237, 239, 241, and 243 Franklin street, shipped via C. B. & Q.

EXHIBIT "A."

(Duplicate.)

7535	1	$24
7454	1	30
7455	1	30
7449	1	30
7448	1	30
7515	1	18
7516	1	18
7523	1	22

7524	1	22	
7336	1	18	
170	1	22	50
152	1	22	50
Cartage			40
		$287	40

Diligent Creditors' Agency, J. B. Gascoigne, manager; Flower, Remy & Holstein, attorneys, First National Bank building, Chicago.

STATE OF ILLINOIS, } ss:
County of Cook, }

Louis Stein, being duly sworn, deposes and says that he is doing business under the firm name (member or agent) and style of Louis Stein & Company (firm name); that Samuel Rich is justly indebted to said deponent
(debtor's name) (creditor's name)
for goods, wares, and merchandise heretofore sold and delivered by said deponent to said
(creditor)
Samuel Rich between the 26th day of January, 1887, and the 28th
(debtor)
day of January, 1887, at his special instance and request; that the statement of account hereto annexed, marked Exhibit "A," is a just and true statement of the goods so sold and delivered and of the true value of the same; that no payments have been made except as shown upon said bill, and that there is justly due from
467 said Samuel Rich *from* said Louis Stein
(debtor)
upon said account the sum of two hundred eighty-seven and $\frac{40}{100}$ dollars over and above all payments, set-offs, counter-claims, allowances, and discounts, together with interest thereon at the rate of 8 per cent. per annum from the 27th day of May, 1887, and that the said Louis Stein is entitled to recover from said Samuel Rich the sum of two hundred eighty-seven $\frac{40}{100}$ dollars, together with interest thereon as aforesaid.

(Signed) LOUIS STEIN.

[NOTARIAL SEAL.] Subscribed and sworn to before me this ninth day of October, 1888.

(Signed) DAN. H. DONOVAN,
Notary Public.

EXHIBIT "B." John W. Webster, Master in Chancery.

Form No. 148.

Assignment of Judgment.

This indenture, made the 13th day of October, one thousand eight hundred and eighty-eight, between Louis Stein & Co., of Chicago, of

the first part, and Sweet, Dempster & Co., of Chicago, of the second part, witnesseth:

Whereas the said party of the first part, on the 26th day of April, one thousand eight hundred and eighty-seven, recovered a judgment in the county court of Lake county, in the State of Colorado, against Samuel Rich for two hundred eighty-seven $\frac{40}{100}$ dollars and costs of suit, as will by the records thereof more fully appear:

Now, this indenture witnesseth: That the said party of the first part, in consideration of one dollar to him duly paid before the sealing and delivery of these presents (the receipt whereof is
468 hereby acknowledged), has sold, assigned, transferred, and set over, and by these presents do- sell, assign, transfer, and set over, unto the said parties of the second part and their assigns the said judgment and any and all sum and sums of money that may be had or obtained by means thereof or on any proceedings to be had thereupon.

And the said party of the first part does hereby constitute and appoint the said parties of the second part and their executors, administrators, and assigns his true and lawful attorney irrevocable, with power of substitution and revocation, for him and in his name and in the name and names of his executors and administrators, but for the sole use and benefit of the said parties of the second part, and, at his own costs and charges, to ask, demand, and receive, and to sue out executions and other writs, and to take all lawful ways for the recovery of the money due or to become due on the said judgment, and, on payment, to acknowledge satisfaction or discharge the same; and attorneys, one or more, under them for the purpose aforesaid *do* make and substitute — same at pleasure again to revoke, hereby ratifying and confirming all that his said attorney or substitute shall lawfully do in the premises.

And the said party of the first part does covenant that there is now due on the said judgment the sum of two hundred and eighty-seven $\frac{40}{100}$ dollars, and that he will not collect or receive the same or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises.

469 (Signed) LOUIS STEIN. [SEAL.]

Sealed and delivered in the presence of—
M. B. ISRAEL.

(Indorsed:) Assignment of judgment. Flonesse, R. H.

Transcript of Judgment. 2400.

UNITED STATES OF AMERICA.

STATE OF COLORADO, } ss :
Lake County, }

In County Court, March Term, A. D. 1887.

Pleas before the Honorable Geo. S. Phelps, judge of the county court of Lake county, in the State aforesaid, and at a term thereof begun and holden at the court-house, in the city of Leadville, in said county, on the 1st Monday (being the 7th day) of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Geo. S. Phelps, judge of the county court, Lake county, State of Colorado.

(Signed) JOSEPH A. LAMPING, *Sheriff.*

Be it remembered, to wit, that heretofore and on the 26th day of April, 1887, the same being one of the regular juridical days of the March term, A. D. 1887, of said county court, the following proceedings *inter alia* were had and entered on record, to wit:

470	LOUIS STEIN, Doing Business under the Firm Name and Style of Louis Stein & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	Attachment.	4473.

And now, on this day, comes the plaintiff, by his attorney, William H. Nash, Esq., no one appearing for the defendant, and thereupon plaintiffs, by attorney, enter their motion for a default herein against the defendant, both as to the attachment and merits of this action.

And it appearing to the court from the summons and writ of attachment issued herein and the returns thereon indorsed that the defendant has been duly and personally served in Lake county with the said summons and writ; and it further appearing to the court that said defendant has failed to plead, answer, or demur to plaintiff's complaint filed herein, although the time within which so to do has long since expired; and it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein as required by law:

It is therefore ordered and adjudged by the court that said motion be sustained, and that the default of said defendant, both as to the attachment and the merits of this action, be, and the same is hereby, entered of record.

And thereupon this cause comes on for hearing and trial, a jury being waived, and the same being submitted to the court, and the court, having heard the evidence adduced, doth find that the de-

fendant is indebted to the plaintiff as alleged in the com-
471 plaint herein, and doth assess plaintiff's damages at the sum of two hundred eighty-seven and $\frac{40}{100}$ dollars, $287.40.

It is therefore considered, ordered, and adjudged by the court that said plaintiff, Louis Stein, doing business under the firm name and style of Louis Stein & Co., do have and recover of and from the defendant the said sum of two hundred eighty-seven and $\frac{40}{100}$ doll's, $287.40, his damages aforesaid assessed, together with his costs herein and about this suit expended, and that they have execution therefore; and it is further ordered that the attachment herein be, and the same is hereby, sustained.

And it is further ordered that the plaintiffs have ten days from this date in which to traverse the answers of the garnishees herein heretofore filed in this cause by them.

(Signed) GEO. S. PHELPS,
County Judge.

Be it remembered that afterwards and on, to wit, Thursday, the 5th day of May, A. D. 1887, being one of the regular juridical days of the May term, A. D. 1887, of said court, the following other proceedings were had, made, and entered on record in said cause, to wit:

LOUIS STEIN, Doing Business under the Firm Name and Style of Louis Stein & Co., Plaintiff,
vs.
SAMUEL RICH, Defendant. } Attachment. 4473.

And now, on this day, comes the plaintiff, by W. H. Nash, Esq., and at the same time A. T. Gunnell, Esq., one of the attorneys for David May and Adolph Hirsch, garnishees herein.

472 And thereupon, by agreement of parties, it is ordered by the court that ten days' time after filing of other and absolute answer by the garnishees herein be given plaintiffs to plead to or traverse such answer.

(Signed) GEO. S. PHELPS,
County Judge.

I, George S. Phelps, judge and clerk of the county court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of judgment entry and orders had, made, and entered of record in a certain cause pending in said court, on the — side thereof, wherein Louis Stein, doing business under the firm name and style of Louis Stein & Co., was plaintiff and Samuel Rich was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Leadville, this 24th day of November, A. D. 1888.

[SEAL.] (Signed) GEO. S. PHELPS,
Judge and Clerk County Court, Lake County, Colorado.

(Indorsement:) Transcript of judgment, county court, Lake county, March & May terms, 1887, in the matter of Louis Stein & Company *vs.* Samuel Rich, No. 4473. Fees, $2.50, paid by plaintiff.

EXHIBIT "A."

Statement.

Folio —.

CHICAGO, 10 | 9, 1888.

473 Mr. Sam. Rich, Leadville, Colo., in account with S. Farwell & Co.

Bills not paid at maturity are subject to sight draft.

DR.

1887, Feb. 11.	Mdse	286	25
M'ch 16.		16	50
		302	75

[SEAL.]

Diligent Creditors' Agency, J. B. Gascoigne, manager; Flower, Remy and Holstein, attorneys, First National Bank building, Chicago.

STATE OF ILLINOIS, } ss:
County of Cook, }

Henry S. Farwell, being duly sworn, deposes and says that he is a member of the firm of S. Farwell and Co., composed of Simeon and Henry S. Farwell and Stephen Lasky; that Sam. Rich is justly indebted to S. Farwell & Co. for goods, wares, and merchandise heretofore sold and delivered by said S. Farwell and Co. to said S. Rich between the 10th day of February, 1887, and the 17th day of March, 1887, at his special instance and request; that the statement of account annexed, marked "Exhibit A," is a just and true statement of the goods so sold and delivered and of the true value of the same; that no payments have been made except as shown upon said bill, and that there is justly due from said S. Rich (debtor)
to said S. Farwell & Co., upon said account, the sum of three hundred two and $\frac{75}{100}$ dollars over and above all payments,
474 set-offs, counter-claims, allowances, and discounts, together with interest thereon at the rate of 8 per cent. per annum from the 19th day of May, 1888, and that said S. Farwell & Co. is entitled to recover from S. Rich
creditor debtor
said sum of three hundred two and $\frac{75}{100}$ dollars, together with interest thereon as aforesaid.

(Signed) HENRY S. FARWELL.

Subscribed and sworn to before me this 9th day of October, 1888.
(Signed) DAN. H. DONOVAN,
[NOTARIAL SEAL.] *Notary Public.*

Assignment of Judgment.

Form No. 148.

This indenture, made the 23d day of October, one thousand eight hundred and eighty-eight, between Simeon Farwell & Co., parties of the first part, and Sweet, Dempster & Co., parties of the second part, witnesseth:

Whereas the said parties of the first part, on the 26th day of April, one thousand eight hundred and eighty-seven, recovered a judgment in the county court of Lake county, in the State of Colorado, against Samuel Rich for three hundred and two $\frac{75}{100}$ dollars and costs of suit, as will by record thereof more fully appear:

Now, this indenture witnesseth: That the said parties of the first part, in consideration of one dollars to them duly paid before
475 the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said parties of the second part and their assigns the said judgment and any and all sum and sums of money that may be had or obtained by means thereof or on any proceedings to be had thereupon.

And the said parties of the first part do hereby constitute and appoint the said parties of the second part and their executors, administrators, and assigns their true and lawful attorney irrevocable, with power of substitution and revocation, for them and in their name and in the name and names of their executors and administrators, but for the sole use and benefit of the said parties of the second part and at their own costs and charges, to ask, demand, and receive and to sue out executions and other writs and to take all lawful ways for the recovery of the money due or to become due on said judgment, and, on payment, to acknowledge satisfaction or discharge the same; and attorneys one or more under the- for -he purpose aforesaid to make and substitute and the same at pleasure again to revoke, hereby ratifying and confirming all that their said attorney or substitute shall lawfully do in the premises.

And the said parties of the first part do covenant that the*ir* is now due on the said judgment the sum of three hundred and two $\frac{75}{100}$ dollars, and that they will not collect or receive the same nor any part thereof, nor relea-e or discharge the said judgment, but will own and allow all lawful proceedings therein, the said parties of the second part saving the said parties of the first part harmless of and from any costs and charges in the premises.

476 Exhibit "C." John W. Webster, master in chancery.

Sealed and delivered in the presence of—

SIMEON FARWELL. [SEAL.]
H. FARWELL. [SEAL.]
STEPHEN LASKY. [SEAL.]

(Indorsement:) Assignment of judgment.

Transcript of Judgment. 2400.

UNITED STATES OF AMERICA.

STATE OF COLORADO, } ss:
Lake County, }

In the County Court, March Term, A. D. 1887.

Pleas before the Honorable Geo. S. Phelps, judge of the county court of Lake county, in the State aforesaid, and at a term thereof begun and holden at the court-house, in the city of Leadville, in said county, on the first Monday (being the 7th day) of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Geo. S. Phelps, judge of the county court, Lake county, State of Colorado; Joseph A. Lamping, sherif-.

Be it remembered, to wit, that heretofore and on the 26th day of April, 1887, the same being one of the regular juridical days of
477 the March term, A. D. 1887, of said county court, the following proceedings *inter alia* were had and entered on record, to wit:

TUESDAY, *April 26th*, 1887.

SIMEON FARWELL, HENRY S. FARWELL, and Stephen Lasky, Copartners Doing Business under the Firm Name and Style of Simeon Farwell & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	4471.	Attachment.

And now, on this day, come the plaintiffs, by their attorney, Wm. H. Nash, Esq., no one appearing for the defendant, and thereupon plaintiffs, by attorney, enter their motion for a default herein against the defendant both as to the attachment and merits of this action, and it appearing to the court from the summons and writ of attachment issued herein and the return thereon endorsed that the defendant has been duly and personally served in Lake county with both said summons and writ, and it further appearing to the court that said defendant has failed to plead, answer, or demur to plaintiffs' complaint filed herein, although the time within which so to do has long since expired, and it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein as required by law, it is therefore ordered and adjudged by the court that said motion be sustained, and that the default of said defendant, both as to the attachment and the merits of this action, be, and the same is hereby, entered of record; and thereupon this cause comes on for hearing and trial, a jury being waived, and the same

being submitted to the court, and the court, having heard
478 the evidence adduced, doth find that the defendant is indebted to the plaintiff-, as alleged in the complaint herein, and doth assess plaintiffs' damages at the sum of three hundred two and $\frac{75}{100}$ dollars, $302.75.

It is therefore considered, ordered, and adjudged by the court that said plaintiffs, Simeon Farwell, Henry D. Farwell, and Stephen Lasky, copartners doing business under the firm name and style of Simeon Farwell & Co., do have and recover of and from the defendant, Samuel Rich, the said sum of three hundred two & $\frac{75}{100}$, $302.75, dollars, their damages aforesaid assessed, together with their costs herein about this suit expended, and that they have execution therefor.

And it is further ordered that the attachment therein be, and the same is hereby, sustained; and it is further ordered that the plaintiffs have ten days from this date within which to traverse the answers of the garnishees herein heretofore filed in this cause by them.

Be it remembered that afterwards and on, to wit, Thursday, May 5th, A. D. 1887, being one of the regular juridical days of the May term, A. D. 1887, of said court, the following other proceedings were had, made, and entered on record in said cause, to wit:

SIMEON FARWELL, HENRY S. FARWELL, and Stephen Lasky, Copartners Doing Business under the Firm Name and Style of Simeon Farwell & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	4471. Attachment.

And no-, on this day, comes the plaintiff-, by W. H. Nash, Esq., and at the same time A. T. Gunnell, Esq., one of the attor-
479 neys for David May and Adolph Hirsch, garnishees herein, and thereupon, by agreement of parties, it is ordered by the court that ten days' time after filing of other and absolute answer by the garnishees herein be given plaintiffs to plead to or traverse such answer.

(Signed) GEO. S. PHELPS,
County Judge.

I, George S. Phelps, judge and clerk of the county court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of entry of judgment and all orders had, made, and entered of record in a certain cause pending in said court, on the — side thereof, wherein Simeon Farwell, Henry S. Farwell, and Stephen Lasky, copartners, &c., as Simeon Farwell & Co., were plaintiffs and Samuel Rich was defendant.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Leadville, this 24th day of November, A. D. 1888.

(Signed) GEO. S. PHELPS,
Judge and Clerk of the County Court, Lake County, Colorado.

(Indorsed:) Transcript of judgment. County court, Lake county, March & May terms, 1887. In the matter of Simeon Farwell & Co. *vs.* Samuel Rich. No. 4471. Fees, $2.50, paid by plaintiffs.

480 EXHIBIT "A."

Statement.

The Duck Brand Co.

Dunlap, Lawton & Hill, manufacturers rubber & oil clothing, 199 & 201 Madison street.

All accounts payable in funds current in Chicago and New York.

CHICAGO, *Oct.* 9, 1888.

Mr. Sam. Rich, Dr.

To mdse., net cash.

March 9, 1887. April 1, 30 d's ---------- 303 10

[SEAL.]

Statements of all our accounts are rendered on the first of each month whether bills are due or not.

Please compare with your books and, if not correct, advise us immediately. All past-due accounts subject to draft.

Diligent Creditors' Agency, J. B. Gascoigne, manager; Flo-er, Remy & Holstein, attorneys, First National Bank building, Chicago.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Charles M. Dunlap, being duly sworn, deposes and says that he is a member of the firm of Dunlap, Lawton & Hall, composed of (member or agent) (firm name) Charles M. Dunlap, Linden C. Lawton, Richard C. Hall; that Sam. Rich is justly indebted to said Dunlap, Lawton & Hall for goods, (debtor's name) (creditor's name) wares, and merchandise heretofore sold and delivered by said Dun- (creditor) lap, Lawton & Hall to said Sam. Rich between the 8th day of March, (debtor)

1887, and the 10th day of March, 1887, at his special instance
481 and request; that the statement of accounts hereto annexed, marked Exhibit "A," is a just and true statement of the goods so sold and delivered and of the true value of the same; that no payments have been made except as shown upon said bill, and that there is justly due from said Sam. Rich to said Dunlap, Lawton (creditor) & Hall upon said account the sum of three hundred three & $\frac{10}{100}$ dollars over and above all paymen-s, set-offs, counter-claims, allow-

ances, and discounts, together with interest thereon at the rate of 8 per cent. per annum from the first day of May, 1887, and the said Dunlap, Lawton & Hall is entitled to recover from Sam. Rich said
(creditor) (debtor)
sum of — dollars, with interest thereon as aforesaid.

(Signed) CHARLES M. DUNLAP.

Subscribed and sworn to before me this 9th day of October, 1888.

(Signed) DAN. H. DONOVAN,

[NOTARIAL SEAL.] *Notary Public.*

EXHIBIT D.

Assignment of Judgment.

Form No. 148.

This indenture, made the 23rd day of October, one thousand eight hundred and eighty-eight, between Dunlap, Lawton and Hall, of Chicago, of the first part, and Sweet, Dempster & Co., of the second part, witnesseth:

Whereas the said parties of the first part on the 26-h day of April, one thousand eight hundred and eighty-seven, recovered a judgment in the county court of Lake county, in the State of Colorado, against Samuel Rich for three hundred and three and $\frac{10}{100}$ dollars and costs of suit, as will by the record thereof more fully appear;

482 Now, this indenture witnesseth: That the said parties of the first part, in consideration of one dollar to them duly paid before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said parties of the second part and their assigns the said judgment and any and all sum and sums of money that may be had or obtained by means thereof or on any proceedings to be had thereupon.

And the said parties of the first part do hereby constitute and appoint the said parties of the second part and their executors, administrators, and assigns their true and lawful attorney irrevocable, with power of substitution and revocation, for them and in their name and in the name and names of their executors and administrators, but for the sole use and benefit of the said parties of the second part and at their own costs and charges, to ask, demand, and receive and to sue out executions and other writs and take all lawful ways for the recovery of the money due or to become due on the said judgment, and, on payment, to acknowledge satisfaction or discharge the same, and attorneys, one or more, under them for the purpose aforesaid to make and substitute and the same at pleasure again to revoke, hereby ratifying and confirming all that their said attorney or substitute shall lawfully do in the premises.

And the said parties of the first part do covenant that there is now due on the said judgment the sum of three hundred and three

$\frac{10}{100}$ dollars, and that they will not collect or receive the
483 same or any part thereof nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said parties of the second part saving the said parties of the first part harmless of and from any costs and charges in the premises.

Sealed and delivered in the presence of—

(Signed)	CHAS. M. DUNLAP.	[SEAL.]
"	L. C. LAWTON.	[SEAL.]
"	RICHARD C. HALL.	[SEAL.]

Exhibit "D." (Signed) John W. Webster, master in chancery.

(Indorsed:) Assignment of judgment.

Transcript of Judgment. 2400.

UNITED STATES OF AMERICA.

STATE OF COLORADO, } *ss:*
Lake County, }

In County Court, March Term, A. D. 1887.

Pleas before the Honorable Geo. S. Phelps, judge of the county court of Lake county, in the State aforesaid, and at a term thereof begun and holden at the court-house, in the city of Leadville, in said county, on the first Monday (being the 7th day) of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Geo. S. Phelps, judge of the county court, Lake county, State of Colorado; Joseph A. Lamping, sheriff.

484 Be it remembered, to wit, that heretofore and on the 26th day of April, 1887, the same being one of the regular juridical days of the March term, A. D. 1887, of said county court, the following proceedings *inter alia* were had and entered on record, to wit:

CHARLES M. DUNLAP, LINDEN C. LAWTON, and Richard Hale, Copartners Doing Business under the Firm Name and Style of Dunlap, Hale & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	4476.	Attachment.

And now, on this day, come the plaintiffs, by their attorney, William H. Nash, Esq., no one appearing for the defendant, and thereupon plaintiffs, by attorney, enter their motion for a default herein against the defendant both as to the attachment and merits

of this action, and it appearing to the court from the summons and writ of attachment herein and the return thereon indorsed that the defendant has been duly personally served in Lake county with the said summons and writ, and it further appearing to the court that said defendant has failed to plead, answer, or demur to plaintiffs' complaint filed herein, although the time within which so to do has long since expired, and it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein as required by law, it is therefore ordered and adjudged by the court that said motion be sustained, and that the default of said defendant both as to the attachment — the merits of this action be, and the same is hereby, entered of record.

485 And thereupon this cause come- on for hearing and trial, a jury being waived, and the same being submitted to the court, and the court, having heard the evidence adduced, doth find that the defendant is indebted to the plaintiff- as alleged in the complaint herein and doth assess plaintiffs' damages at the sum of three hundred three and $\frac{10}{100}$ dollars, $303.10.

It is therefore considered and adjudged by the court that the said plaintiffs, Charles M. Dunlap, Linden C. Lawton, and Richard Hale, copartners doing business under the firm name and style of Dunlap, Hale & Co., do have and recover of and from the defendant, Samuel Rich, the said sum of three hundred three & $\frac{10}{100}$ dollars, $303.10, their damages as aforesaid assessed, together with their costs hereinabout their suit expended, and that they have execution therefor; and it is further ordered that the attachment herein be, and the same is hereby, sustained; and it is further ordered that the plaintiffs have ten days within which to traverse the answer of the garnishees herein heretofore filed in this cause by them.

(Signed) GEO. S. PHELPS,
County Judge.

Be it remembered that heretofore and on, to wit, Thursday, the 5th day of May, A. D. 1887, being one of the regular juridical days of the May term, A. D. 1887, of said court, the following other proceedings were had, made, and entered on record in said cause, to wit:

486 CHARLES M. DUNLAP, LINDEN C. LAWton, and Richard Hale, Copartners Doing Business under the Firm Name & Style of Dunlap, Hale & Co., Plaintiffs,
vs.
SAMUEL RICH, Defendant. } 4476. Attachment.

And now, on this day, comes the plaintiff-, by W. H. Nash, Esq., and at the same time A. T. Gunnel, Esq., one of the attorneys for David May and Adolph Hirsch, garnishees herein, and thereupon, by agreement of parties, it is ordered by the court that ten days'

time after filing of other and absolute answer by the garnishees herein be given plaintiffs to plead to or traverse such answer.

(Signed) GEO. S. PHELPS,
County Judge.

I, George S. Phelps, judge and clerk of the county court of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of judgment entry and order had, made, and entered of record in a certain cause pending in said court on the — side thereof, wherein Chas. M. Dunlap, Linden C. Lawton, and Richard Hale, copartners, &c., as Dunlap, Hale & Co., were plaintiffs and Samuel Rich was defendant.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Leadville, this 24th day of November, A. D. 1888.

(Signed) GEO. S. PHELPS,
487 *Judge and Clerk of the County Court,*
Lake County, Colorado.

(Indorsed:) Transcript of judgment. County court, Lake county. March & May terms, 1887. In the matter of Dunlap, Hale & Co. *vs.* Samuel Rich. No. 4476. Fees, $2.50, paid by plaintiffs.

Northwestern Creditors' Agency, rooms 22, 23, and 24 Mercantile building, 116 La Salle St., Chicago.

STATE OF ILLINOIS, } *ss:*
Cook County, }

Maier A. Eisman, being duly sworn, on oath says that he is — of the firm of M. A. Eisman & Brother; that said firm is composes of affiant and Rudolph Eisman; that Samuel Rich, of Leadville, in the State of Colorado, — justly indebted to said M. A. Eisman & Bro. in the sum of two hundred sixteen dollars and sixty cents, being the agreed purchase price of goods, wares, and merchandise sold and delivered by said firm to said Rich upon his special instance and request; that the annexed itemized account is true and correct, and that there is now due, unpaid, and owing upon said account, after allowing all just credits, deductions, and set-offs, the sum of $216.60.

(Signed) MAIER A. EISMAN.

Subscribed and sworn to before me this 9th day of April, 1887.

(Signed) CHARLES W. HOLZHEIMER,
[NOTARIAL SEAL.] *Notary Public in and for*
Cook County, Ill.

488 EXHIBIT "E." John W. Webster, Master in Chancery.

Maier A. Eisman. Rudolph Eisman.

No claims allowed unless made within five days after receipt of goods. No allowance for damaged goods. Return at once at our expense.

Mr. Samuel Rich, Leadville, Colorado, bought of M. A. Eisman & Bro., wholesale dealers in jewelry, watches, clocks, and silverware, 275 Madison street.

Terms: 10 days, 6%; 30 days, 5%; 60 days, net.

2 doz.	381	Initial scarf-pins	1.25	2 50
2 "	1	"	2.00	4 00
2 "	2		3.00	6 00
2 "	3		4.50	9 00
2 "	4		6.00	12 00
1 "	Automatic sleeve button, boxed			4 50
1 "	Successor " "			4 50
1 "	Facility " "			7 50
1 "	Mount Hoyse " "			7 50
1 "	B. " " "			10 50
1 "	C. " " "			18 00
1 "	Only lever, Pear's fancy button			9 00
1 "	American lever "			7 50
1 "	B. "			7 50
2 "	405	Collar buttons	2.00	4 00
2 "	2575	" "	3.00	6 00
2 "	2574	" "	3.00	6 00
2 "	130	" "	4.50	9 00
1 gross	B.	" "		4 50
2 doz.	6064	" "	30	60 00
1 "	Fire-guilt box chains			15 00
1 "	Rolled plate			27 00
1 "	1200	Lockets		12 00
1 "	1271	Compass		7 50
1 "	1272	Charms		7 50
1 "	1273	Charms		7 50
				$216 60

CHICAGO, ILL., *Oct.* 23, 1888.

For value received we hereby transfer, assign, and set over to Sweet, Dempster & Co. all our right, title, and interest in and to the above claim.

(Signed)

MAIER A. EISMAN.
RUDOLPH EISMAN.

(Indorsed:) 4, 26, 1. Sam. Rich.

489 EXHIBIT "F." John W. Webster, Master in Chancery.

All bills payable in St. Louis or New York funds.

F. *Statement*

Mr. S. Rich, Leadville, Colorado, to Kitzinger, Tuholske & Frohlichstein, 419 Washington avenue, Dr.

ST. LOUIS, MO., ——, 1887.

1887.
Feb. 9. To mdse. as Apr. 1, 60 days 346 00

LEADVILLE, *Oct.* 23, 1888.

For value received we hereby transfer, assign, and set over to Sweet, Dempster & Co. all our right, title, and interest in and to the above claim.

(Signed) KITZINGER, TUHOLSKE & FROHLICHSTEIN.

The Ten Broek Agency, St. Louis. No. 37487. Always report by number and names of parties.

"Master's Report."

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

To the honorable the judge of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, one of the masters in chancery of the circuit court of the United States for the district of Colorado, residing in Denver, to whom this cause was referred by the order of said honorable court, a certified copy of which is hereunto annexed,
490 to take testimony of witnesses, examine the evidence and proofs, and report the same, together with his conclusions, to this court, do most respectfully certify and report unto your honor that Asher Heller, Isadore Heller, Ed. Nathan, and Samuel Rich, witnesses on behalf of the complainants, and also Alva Adams, Samuel Rich, Ed. Nathan, and Rachel Nathan, witnesses on behalf of other claimants herein, were examined before me, who, previous to their respective examinations, were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy in this cause, now pending and undetermined in said circuit court.

That the testimony of said witnesses was taken and reduced to writing before me, and, after the same had been so taken, the testimony of said witnesses who have subscribed the same was read over to them respectively by me in their presence and in the presence of counsel or such of them as were in attendance before me, and thereupon the same was subscribed and sworn to respectively,

the oaths being administered by me as master, at my office, in the city of Denver, county of Arapahoe, State of Colorado; and as to those witnesses who have not subscribed their testimony the reading over to them and their signatures have been waived by stipulation of counsel.

And I do further certify and report that complainants produced in evidence Exhibits A, B, C, D, and E on their part and Exhibit A attached to Frankenthal *et al.'s* claim and Exhibits A, B, C, D, and E attached to the testimony of other witnesses in behalf of claimants and which are hereto attached and made a part of the evidence in this cause.

491 I also further certify and report unto your honor that the testimony of witnesses in this case is very conflicting concerning the value of the stock of goods set forth in the pleadings and referred to in the evidence. The complainants' witnesses testify that the value of this stock of goods was from $30,000 to $45,000, while, on the other hand, defendants' witnesses testify that the value was from $15,000 to $24,000, one witness, on cross-examination, fixing cost price at $30,000. The stock was inventoried at $22,558.53, and sold at auction under the chattel mortgage for $20,100.00; so that the questions to be determined by your master is what was the actual value—market value—of that stock of goods at the time they were sold, regardless of any profits that might be derived by purchasing them at wholesale rates, and also regardless of the retail profit that could be made, if sold at retail, over and above the actual market values of the goods on the day of sale.

It is evident, from a careful examination of the pleadings, testimony, and proofs in this case, that defendants' witnesses, who have testified the value to be from $15,000 to $24,000, were only figuring on a basis of purchasing the goods as low as possible, with an idea of making a large profit by again selling them at retail, without any reference to the rights of creditors in this case, which would not be a true criterion of market value.

It is also evident, on the other hand, that complainants' witnesses in testifying that the value of the goods was from $30,000 to $45,000 must have taken into consideration a fair retail profit of at least twenty per cent. above the actual market value for the benefit

492 of the creditors in this case, which also is not a true criterion of market value; so that we are now confronted with a problematical fact which is not so easy of solution, and in this dilemma your honor will, perhaps, permit me to draw a little from my own experience and observation in about fifty cases, more or less, in bankrupt matters, assignments, and chattel-mortgage cases for the past twenty years, as attorney, counselor, solicitor, and assignee, and my observation is, from this experience, that a person or firm figuring upon a purchase of a stock of this class of goods, to wit, gents' clothing, furnishing goods, hats and caps, in bulk or quantity and not separately by pieces or parcels, to be sold at public auction, in most cases invariably figure upon fifty per cent. of what they consider to be the market value of the goods, with about twenty per cent. included as retail profits, as nearly as they can arrive at it by approx-

imation and comparison without handling the goods; so that taking the bid of $20,100 (we will call it 20,000 for convenience) in this case as a base of about fifty per cent. of the market value of these goods, we have $40,000 as the market value, with twenty per cent. retail profit included, which amounts to $8,000, and, deducting this from the $40,000, upon this basis of calculation we have as a market value of these goods, if they were an ordinary and common stock of goods, the sum of $32,000; but the evidence in this case shows that these goods were in good, fair condition, and that about one-half of them—from $13,000 to $15,000 worth—were new goods only a few days prior to the sale under the mortgage, and on this account we conclude that ten per cent. of $15,000, to wit, the sum of $1,500, should be added to the above amount, making the actual market value of the goods at the time of sale $33,500—

493 That is to say, our conclusion is that it would take that much money to replace the goods that were sold under the mortgage on the day of sale had they been suddenly destroyed, regardless, as we said before, of wholesale rates at which they might have been purchased or retail profits at which they may be sold, and also regardless of the amount bid at the auction sale or of the inventory made in this case, which was not subscribed or sworn to by those making it, except in a general way in testimony to which it is attached, and does not appear to have been made by any order of court, and is at best only a memorandum, and to my mind is not positive proof of the market value of this stock of goods as shown by the evidence.

I also further certify and report that the claims proven in this case under the order of the court, and which the attorneys for the parties claim I shall fix upon a *pro rata* basis as required by the said order, as they say, although to my mind it is a little doubtful whether the order requires this at the hands of your master; but for fear I may not perform my whole duty to the court I report as follows:

Total value fixed	$33,500 00	
Deduct Lowenstein & Co.'s claim, as per stipulation of counsel	2,113 00	
And we have left a balance to be divided into *pro rata* shares upon all claims proven before me		$31,387 00

The claims proved before me are as follows:

D. K. Tenney *et al.* promis-ory note, April 25th, '87, payable on demand; judgment confessed April 26th, 1887	$13,665 00	
494 Interest, ten per cent. per annum, to Dec. 26th, '88, one year eight months and one day	2,281 30	
Total		15,946 30

Morris Leopold *et al.*; judgment circuit court Colorado, April 25th, '87	$11,726 00	
Interest, at ten per cent. per annum, to Dec. 26th, '88, one year eight months and one day	1,857 58	
Total		$13,583 58
May & Hirsch promis-ory note, dated April 4th, '87	$18,400 00	
Interest, ten per cent. per annum, to Dec. 26th, '88, one year eight months and 22 days	3,178 04	
Total		21,578 04
Six claims of Sweet, Dempster & Co. as follows:		
S. Farwell & Co., assignment of judgment rendered April 26th, '87	$302 75	
Interest, ten per cent., to Dec. 26th, '88, one year and eight months	50 46	
Total		353 21
Dunlap, Lawton & Hall, assignment of judgment rendered April 26th, '87	$303 10	
Interest, ten per cent. per annum, to Dec. 26th, 1888, one year and eight months	53 04	
Total		356 14
Louis Stein & Co., assignment of judgment rendered April 26th, 1887	$287 40	
Interest, ten per cent. per annum, to Dec. 26th, 1888, one year and eight months	49 30	
Total		336 70
S. Rich (personal claim), assignment of judgment rendered April 26th, 1887	$934 50	
Interest, ten per cent. per annum, to Dec. 26th, 1888, one year and eight months	156 75	
Total		1,091 25
Eisman & Brother, assignment of account dated March 5th, 1887	$216 60	
Interest, ten per cent. per annum, to Dec. 26th, 1888, one year eight months and 21 days	37 36	
Total		253 96
495 Kitzinger, Tubolske, and Frohlichstein, assignment of account dated Feb. 9th, 1887	$346 00	
Interest, ten per cent., to Dec. 26th, 1888, one year ten months and 17 days	59 29	
Total		405 29

Total claim and interest of Sweet, Dempster & Co.		$2,796 55
Chas. E. Frankenthal *et al.*; judgment in attachment, April 19th, 1887	$1,373 35	
Interest, at 10 per cent. per annum, to Dec. 26th, '88, one year eight months and seven days	231 59	
Total		1,604 94
Two claims of Alva Adams, not- of Sam. Rich to Ed. Nathan, as per Exhibit B, dated Dec. 31st, 1885; no rate of interest specified on the note	$1,000 00	
Interest, ten per cent. per annum, to Dec. 26th, 1888, two years eleven months and twenty-five days	198 62	
Total		1,198 62
Nathan's check, drawn by Meyer & Nathan and paid by him—no rate of interest expressed on its face—dated June 13th, 1883, Exhibit C	$2,500 00	
Interest, ten per cent. per annum, to Dec. 26th, 1888, five years six months and thirteen days	1,384 03	
Total		3,884 03
Total of Adams' claim		5,082 65
Mrs. Henrietta Metcalf, promissory note, dated March 5th, 1887; no rate of interest expressed on the face of the notes	$1,300 00	
Interest, at ten per cent. per annum, to Dec. 26th, 1888, one year nine months and one day	213 02	
Total		1,513 02
Mrs. Rachael Nathan, note discounted at Bank of Leadville Jan. 26th, 1884, on which one year and one month's interest had been paid	$3,500 00	
Interest, ten per cent. per annum, three years and ten months, to Dec. 29, '88	1,341 67	
Total		4,841 67
Total amount of claims, with interest, proven before me		$66,946 75

Pro Rata Decimal.

Total claims.	Value.	Decimal.
66,946.75	(31,387.00)	.4688352+

496 *Amount of Claims as pro Rata Shares under Order of Court.*

Names.	Total claim.		Decimal.	Amounts pro rata.
Tenney *et al.*	$15,946 30	×	.4688352+	$7,476 19
Leopold & Co.	13,583 58	×	"	6,368 46
May & Hirsch	21,578 04	×	"	10,116 54
Sweet, Dempster & Co.	2,796 55	×	"	1,311 12
Frankenthal *et al.*	1,604 94	×	"	752 45
Alva Adams	5,082 65	×	"	2,382 93
Mrs. Metcalfe	1,513 02	×	"	709 36
Mrs. Nathan	4,841 67	×	"	2,269 95
Claims	$66,946 75		Value	$31,387 00

And I further certify that I am not an attorney, solicitor, or of counsel for either of the parties or claimants herein, and have no interest whatever in the result of this suit.

All of which is respectfully submitted.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Dated Dec. 26th, 1888.

497 *Master's Fees.*

Parties and claimants, Dr.

To 7½ days examining testimony & evidence, fixing value of goods, figuring interest on claims proven, and pro-rating amounts, at $10.00 per day	$75 00

Which, as master, I have fixed on *pro rata* basis as follows:

Testimony of claimants represented by R. D. Thompson, Esq., one-half of $75.00	$37 50
Claimants represented by Judge Gunnell, of Leadville, one-third of $75.00	25 00
Claims represented by Chas. H. Toll, Esq., one-sixth of $75.00	12 50
Total master'- fees for report	$75 00

Which makes master's fees as follows:

Testimony of witnesses represented by R. D. Thompson, Esq., 65 folios at 20 cents	$13 00
Two days' attendance @ $3.00 a day	6 00

Administering four oaths, 10 cts.	$ 40
Marking and attaching six exhibits, 10 cts.	60
One-half master's fees for report, as per above *pro rata*	37 50
Total	$57 50

Received payment of R. D. Thompson, Esq., solicitor for complainants, December 26th, 1888.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Claimants May & Hirsch, represented by A. T. Gunnel, Esq., their attorney.

To one-third master's fees for report as above prorated ---- $25 00

Received payment of —— ——.

—— ——,
Master in Chancery.

Claimants represented by Chas. H. Toll, Esq.: Alva Adams, Mrs. Metcalfe, and Mrs. Nathan.

Taking 53 folios testimony at 20 cents	$10 60
One day's attendance	3 00
Administering four oaths, ten cents	40
Marking and attaching four exhibits at ten cents	40
One-sixth master's fees for report as above prorated	12 50
Total	$26 90

Received payment of Chas. H. Toll, Esq., solicitor for claimants.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

498 December 26th, 1888.

Total amount of master's fees ---- $109 40

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Dec. 28, '88.

(Indorsed:) No. 2149. Daniel K. Tenney *et al.*, complainants, *vs.* Samuel Rich *et al.*, defendants. Testimony & proofs and master's report. Filed Dec. 28, 1888. William A. Willard, clerk.

And afterwards and on the same day, to wit, the 28th day of December, A. D. 1888, there was filed in said court and in said cause the depositions of Jonas H. Monheimer and Marcus H. Monheimer on behalf of defendants; and the said depositions are in words and figures a- follows, to wit:

Depositions of Monheimer et al. — Behalf Defendants.

Charles Edgar Mills, notary and commissioner for all the States and Territories, 115 Broadway, N. Y. (Seal.)

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

DANIEL K. TENNEY *et al.* *vs.* SAMUEL RICH *et al.*

MAURICE L. LEOPOLD *et al.* *vs.* SAMUEL RICH *et al.*

499 It is hereby stipulated by and between the plaintiffs and the defendants May & Hirsch in the above-entitled actions that the depositions of J. H. Monheimer and M. H. Monheimer may be taken upon the interrogatories and cross-interrogatories hereto attached, in the city of New York, before Charles Nettleton or Charles Edgar Mills, at 115 Broadway, N. Y., without the formality of a commission issuing for that purpose, and that the same may be read in evidence upon the hearing in the above-entitled actions without objection, except as to the substance of the interrogatories or the answers thereto.

(Signed) R. D. THOMPSON, *Att'y for Plaintiffs.*

(Signed) BISSELL & GUNNELL, *Att'ys for Def'ts May & Hirsch.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

DANIEL K. TENNEY *et al.* *vs.* SAMUEL RICH *et al.*

MAURICE L. LEOPOLD *et al.* *vs.* SAMUEL RICH *et al.*

Interrogatories and Cross-Interrogatories to be Propounded to J. H. Monheimer and M. H. Monheimer in the Above-Entitled Causes.

Int. 1st. State your name, age, occupation, and place of residence.

Int. 2nd. Where did you reside on the 24th of March,
500 A. D. 1887, and in what business were you engaged, how long

had you resided at such place, and how long had you been engaged in the business?

Int. 3rd. State fully what experience you have had in the dealing in and handling of gents' furnishing goods, hats, caps, and clothing, and where you have had that experience.

Int. 4th. State whether or not you were acquainted with the value of hats, caps, gents' furnishing goods, and clothing in the city of Leadville, county of Lake and State of Colorado, in the year 1887.

Int. 5th. Were you acquainted with the stock of goods formerly owned by Sam. Rich, of Leadville, and which was afterwards transferred to David May and Adolph Hirsch by chattel mortgage; and if so, when and where and how often did you see said stock of goods?

Int. 6th. State whether or not you know of an invoice of said stock of goods having been taken at the time that the goods were *were* turned over to May & Hirsch under the terms of said chattel mortgage, and, if you do know of and concerning the taking of the invoice, state whether or not you assisted in the taking thereof; and, if so, state fully all about the mode and manner of taking the invoice—who, if you recollect, were engaged in the taking of the invoice, and upon what basis the valuation of the goods was fixed in the taking of it, and whether the invoice was taken fairly and correctly represented the then value of the goods in the said city of Leadville.

Int. 7th. State, *of* you know, what was the value of said goods at the time of the making of said invoice.

501 Int. 8th. State whether or not you was present at the time said goo-s were sold under the said chattel mortgage by the deputy sheriff, J. H. Korty; and, if so, what the goods brought, what the mode and manner of making the sale was, and whether the goods were then sold for the best price that could be gotten for them at that time in the city of Leadville by the exercise of due care and diligence in the selling of them by the mortgagees, May & Hirsch.

Excepted to by plaintiffs' attorney because calling for testimony that is irrelevant and immaterial.

Int. 9th. State fully all that you know about the stock of goods at the time of the making of the mortgage, what it consisted of, what it was worth, how it was sold under the mortgage, and whether or not the price obtained for it was a fair and good price or otherwise.

(Signed) BISSELL & GUNNELL,
Att'ys for the Def'ts May & Hirsch.

Cross-Interrogatories to be Propounded to J. H. Monheimer and M. H. Monheimer under the Stipulation Hereto Attached.

X Int. 1. Were you ever in the clothing or gents' furnishing business in Leadville, Colorado; if so, when, and for how long?

X Int. 2. What stock of clothing or gents' furnishing goods did you ever own or handle in Leadville, Colorado?

X Int. 3. Is it not a fact that you were engaged in the dry-goods business while in Leadville, Colorado?

502 X Int. 4. How long have you known David May & Adolph Hirsch, and are you in any way related to them or either of them?

X Int. 5. What business relations, if any, have you ever had with May & Hirsch or either of them?

X Int. 6. If you say you assisted in taking the invoice of the goods turned over by Sam. Rich to May & Hirsch in March, 1887, what part of the work did you do in taking same; were you present all the time during which invoice was being taken; and who, if any one, fixed the price set down in the invoice?

X Int. 7. Do you know of your own knowledge that every article in the store was put down on such invoice?

X Int. 7½. Is it true that the goods turned over by Rich were sold by May & Hirsch for all that they were worth?

X Int. 8. Could the stock of Rich, turned over to May & Hirsch, have been laid down in Leadville for the price they realized at the sale conducted by J. H. Korty?

X Int. 9. Is it your experience that a large stock of goods put up at public sale realizes what it is worth, or have you, in the course of your business life, ever adopted such a manner of selling your goods?

503 X Int. 10. Are you on friendly relations with Sam. Rich or have you ever had any misunderstanding with him?

(Signed) R. D. THOMPSON,
Att'y for Plaintiff-.

In the Circuit Court of the United States for the District of Colorado.

DANIEL K. TENNEY *et al.*,
vs.
SAMUEL RICH *et al.*

MAURICE L. LEOPOLD *et al.*
vs.
SAMUEL RICH *et al.*

STATE OF NEW YORK,
City and County of New York, } *ss:*

The depositions of Jonas H. Monheimer and Marcus H. Monheimer, of the city of Brooklyn, county of Kings and State of New York, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths on this 18th day of October, A. D. 1888, at the office of Nettleton & Mills, No. 115 Broadway, in the city, county, and State of New York aforesaid, by me, Charles Edgar Mills, a commissioner duly appointed by the stipulation of counsel for the respective parties and hereto attached for the examination of the said Jonas H. Monheimer and Marcus H. Monheimer, wit-

nesses in certain suits and matters in controversy now pend-
504 ing and undetermined in the said circuit court of the United States, wherein Daniel K. Tenney *et al.* are complainants *versus* Samuel Rich *et al. are* defendants, and Maurice L. Leopold *et al.* are complainants *versus* Samuel Rich *et al. are* defendants, in behalf of the said defendants, as well on the cross-interrogatories of *of* complainants as upon the interrogatories of the defendants, which were attached to said stipulation. and upon none others.

The said JONAS H. MONHEIMER, being first duly sworn by me as a witness in the said causes, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiffs as the defendants, in relation to the matters in controversy between the said plaintiffs and defendants, testified and deposed as follows:

1st. In answer to the first interrogatory the witness says: My name is Jonas H. Monheimer; I am 44 years of age; I am by occupation a merchant and dealer in men's furnishing goods at 691 Broadway, New York city, State of New York, and I reside at 589 Bedford avenue, Brooklyn, New York.

2nd. In answer to the second interrogatory the witness says: On the 24th of March, 1887, I followed the business of a general dry-goods merchant in Leadville, Colorado, where I at that time resided. I resided at Leadville from April, 1880, to Oct. 1st, 1887, and I was engaged in the dry-goods business there, as before stated, from April, 1880, to May 13th, 1887.

3rd. In answer to the third interrogatory the witness says: I have followed the business of dry goods and gents' furnishing goods,
including hats and caps, for the past 20 years in New York
505 and elsewhere, also in Leadville, and during that period of time have had a general experience in dealing and handling gents' furnishing goods, hats, and caps.

4th. In answer to the fourth interrogatory the witness says: I was intimately acquainted with the value of hats, caps, and gents' furnishing goods as sold in the city of Leadville, county of Lake, State of Colorado, in the year 1887.

5th. In answer to the fifth interrogatory the witness says: I was well acquainted with the stock of goods formerly owned by Sam. Rich, of Leadville, which was afterwards transferred to David May & Adolph Hirsch by chattel mortgage. I saw the said stock of goods almost daily.

6th. In answer to the sixth interrogatory the witness says: Yes; I knew of the invoice being taken; I assisted taking it. The others engaged in taking it were H. Strauss and Solomon Strauss, Joe Selig, Mr. David May, M. H. Monheimer; also a young man by the name of Cash, whose first name I do not recollect, and another young man by the name of I. Heller. It was taken in the regular manner in which stocks are invoiced, each party counting the articles and putting them on slips of paper, which were pinned to the lots; after that had been done the goods were called out to the book-keeper, a Mr. Nye, who entered them in the book. There was

also another young man assisted us in taking the invoice by the name of L. R. Johnson. We all took the invoice at the time the goods were turned over to May & Hirsch under the terms of the chattel mortgage. The new goods that came in that season
506 were taken and valued at Eastern cost and the old stock and odds and ends were taken a- what we thought they were worth at an appraised valuation. There was an accumulation of old stock on hand, as the business had been carried on prior to my going to Leadville; it had been a stock that had been previously sold out by Nathan Brothers to Sam. Rich. The invoices, in my opinion, were fairly and correctly taken and their valuation represented fairly and correctly the then value of the goods in the city of Leadville, Colorado.

7th. In answer to the seventh interrogatory the witness says: The invoices summed up to twenty-three thousand dollars, or a little over, which was the value of said goods at the time.

8th. In answer to the eighth interrogatory the witness says: I was present at the time said goods were sold under the chattel mortgage by Deputy Sheriff J. H. Korty; the goods brought at the sale twenty thousand one hundred dollars; the sale was advertised for ten days; the store was closed during that time. At the advertised day of sale the store was opened and a general public auction—sheriff's sale—was held according to the advertised notice, which was read by the deputy sheriff prior to the sale; all the principal merchants of Leadville attended the sale; there were different bids made by various parties, and it was finally knocked down to the highest bidder at twenty thousand one hundred dollars, that beinthe highest sum bidden for the sale. It was first attempted to sell the stock in lots, without success. The goods were sold at
507 the best price that could be gotton for them in that market in the city of Leadville; due care and diligence was exercised in selling them by the mortgagees, May & Hirsch.

9th. In answer to the ninth interrogatory the witness says: I can only answer about the stock of goods as to their value at the time we took the invoice, as stated in my answer to the sixth interrogatory. At that time the stock consisted of clothing, gents' furnishing goods, hats, and caps, and was worth about twenty-three thousand dollars, according to the invoices. It was sold by the sheriff under the mortgage, as I have stated in my preceding answer to the eighth interrogatory. The price obtained for the stock at a public sale was a fair and good price, in my opinion, for an auction sale.

To the several cross-interrogatories propounded to the witness he further deposeth and saith as follows:

1st X. In answer to the first cross-interrogatory the witness says: I was in the gents' furnishing business in Leadville, Colorado, from April, 1880, to May 13, 1887. My business there was dry-goods business, and I also kept a large stock of gents' furnishing goods.

2nd X. In answer to the second cross-interrogatory the witness

says: I have never been in the clothing business in Leadville, but I followed the business of dry goods and gents' furnishing goods, also hats and caps, during my residence and business there.

3rd X. In answer to cross-interrogatory third the witness says: Yes; together with gents' furnishing goods, hats, and caps.

508 4th X. In answer to fourth cross-interrogatory the witness says: I have known David May & Adolph Hirsch since the year 1880. I became acquainted with them at Leadville. They are in no way related to me, neither if them.

5th X. In answer to fifth cross-interrogatory the witness says: We had business relations with regard to some real estate and the erection of buildings thereon in Leadville, Colorado. We had no other business relations, and I have no business relations with him of any kind at the present time. The real estate that we did own together partly was sold by me while in Leadville; the balance of his interests he has sold to other parties since I left there.

6th X. In answer to sixth cross-interrogatory the witness says: I helped to count some lots, marked the tickets which were afterwards called off to the book-keeper, and did my share with others in the work. I was not present all the time during which the invoice was being taken. The prices were fixed and set down in the invoice by the parties assisting in taking the stock.

7th X. In answer to the seventh cross-interrogatory the witness says: To the best of my knowledge, yes.

7th (*a*) X. In answer to the seventh (*a*) cross-interrogatory the witness says: Yes.

8th X. In answer to the eighth cross-interrogatory the witness says: They could not. No stock could be laid down for what a sheriff would sell it at public sale.

509 9th X. In answer to ninth cross-interrogatory the witness says: No, sir.

10th X. In answer to tenth cross-interrogatory the witness says: I am on friendly relations with Sam. Rich; our relations have never been otherwise.

(Signed) JONAS H. MONHEIMER.

Subscribed and sworn to before me this 18th day of October, A. D. 1888.

(Signed) CHARLES EDGAR MILLS,
Commissioner, &c.

The said MARCUS H. MONHEIMER, being first duly sworn by me as a witness in the said causes, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiffs as the defendants, in relation to the matters in controversy between the said plaintiffs and defendants, testified and deposed as follows:

1st. To the first interrogatory the witness says: My name is Marcus H. Monheimer; I am 38 years of age; I am by occupation a merchant in men's furnishing goods at 691 Broadway, New York city, and I reside at 589 Bedford avenue, Brooklyn, New York.

2nd. To the second interrogatory the witness says: I resided on the 24th of March, 1887, at Leadville, Colorado, where I was engaged in the business of dry goods, gents' furnishing goods, hats, and caps. I resided there from 1880 to the 18th of July, 1887, and during the time of my residence there I was engaged in the same business as previously stated from July, 1880, to May 13, 1887.

510 3rd. To the third interrogatory the witness says: I have dealt in general dry goods and gents' furnishing goods for the last twenty years. I have had experience in such business in Leadville, New York city, Washington city, and other places.

4th. To the fourth interrogatory the witness says: I was acquainted with the value of hats, caps, and gents' furnishing goods in Leadville in the year 1886.

5th. To the fifth interrogatory the witness says: I was acquainted with the stock of goods formerly owned by Sam. Rich, of Leadville, and which was transferred to David May and Adolph Hirsch by chattel mortgage. I saw this stock of *of* goods almost daily.

6th. To the sixth interrogatory the witness says: I know of the invoice of said stock at the time it was taken, when the goods were turned over to May & Hirsch under the terms of the chattel mortgage. I assisted at the taking of the invoice; it was taken in the store by Mr. Heller, Mr. Strauss, Mr. Cash, Mr. Lou. Johnson, Mr. Seelig, and by Edward Strauss, of Denver; J. H. Monheimer, and myself. The goods were taken from the shelf, examined, appraised, ticketed, and then called off to the book-keeper, and he entered same in invoice books. The new goods were taken at Eastern cost; the old goods were appraised and taken at whatever they were considered worth. The invoice was fairly and correctly taken and represented fairly and correctly the market value of the goods in said city of Leadville.

511 7th. To the seventh interrogatory the witness says: In the neighborhood of twenty-three thousand dollars.

8th. To the eighth interrogatory the witness says: I was present at the time said goods were sold under the chattel mortgage by Deputy Sheriff J. H. Korty. The goods brought at public sale twenty thousand one hundred dollars. The sale was advertised for ten days. At the expiration of the ten days the sheriff offered the stock at public auction at the advertised place (the store), and the stock was sold to the highest bidder, all prominent merchants of the place being present at the time of sale and bidding on same. The sale was made for the best price that could be gotten at the time in the city of Leadville, and due care and diligence was exercised in the sale by the mortgagees, through the sheriff.

9th. To the ninth interrogatory the witness says: My knowledge of the goods commenced at the time of my assisting in taking the invoices. The stock consisted of gents' clothing, gents' furnishing goods, hats, and caps. It was worth at this time, according to the inventory taken, twenty-three thousand dollars. It consisted of some new stock and some stock that had been moved from two or three previous stores. It was sold under sheriff 's sale, through the

mortgage-, and the price obtained for it at that sale was a fair and good price, as such sales go.

To the several cross-interrogatories the witness further deposes and says as follows:

1st X. To the first cross-interrogatory the witness says: I was in the dry goods and gents' furnishing business, and also sold
512 hats and caps, in Leadville, Colorado, from July, 1880, to May 13th, 1887.

2nd X. To the second cross-interrogatory the witness says: Dry goods, gents' furnishing goods, hats, and caps.

3rd —. To the third cross-interrogatory the witness says: Partly; dry goods, gents' furnishing goods, hats, and caps.

4th X. To the fourth cross-interrogatory the witness says: I know the gentlemen named; have known them from June, 1880. I am not related to them in any way, having become acquainted with them while at Leadville.

5th X. To the fifth cross-interrogatory the witness says: No direct business relations with either of them.

6th X. To the sixth cross-interrogatory the witness says: As I stated before, I assisted in taking the invoices and did my share of the work—in my answer to the sixth direct interrogatory. I was not present all the time during which the invoice was being taken. I fixed some of the prices and appraised some of the others that were in dispute, and the appraised prices were set down in the invoice. The others who assisted did the same.

7th X. To the seventh cross-interrogatory the witness says: To the best of my knowledge, every article was invliced.

7 (*a*) X. To the seventh (*a*) cross-interrogatory the witness says: The goods that were turned over by Rich to May & Hirsch were sold by P. H. Korty, deputy sheriff, and brought all that they were worth at public sale.

8th X. To the eighth cross-interrogatory the witness says: They could not.

513 9th X. To the ninth cross-interrogatory the witness says: No, sir.

10th X. To the tenth cross-interrogatory the witness says: I am on the best of terms with him; always have been.

(Signed) MARCUS H. MONHEIMER.

Subscribed and sworn to before me this 18th day of October, A. D. 1888.

(Signed) CHARLES EDGAR MILLS,
Commissioner, &c.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

I, Charles Edgar Mills, of the county of New York and State of New York, a commissioner duly appointed to take the depositions of the said Jonas H. Monheimer and Marcus H. Monheimer, whose names are subscribed to the foregoing depositions, do hereby certify

that, previous to the commencement of the examination of the said Jonas H. Monheimer and Marcus H. Monheimer as witnesses in the said suits between the said Daniel K. Tenney *et al. versus* Samuel Rich *et al.* and Maurice L. Leopold *et al. versus* Samuel Rich *et al.*, they were each respectively first duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; the said depositions were taken by me and reduced to writing by E. J. Bunker, who is a disinterested third person not of kin, counsel, or attorney or in any manner interested in the result of these suits, at the office of Nettleton & Mills, No. 115 Broad-
514 way, in said city, county, and State of New York, on this 18th day of October, A. D. 1888, and that after said depositions were taken by me as aforesaid the interrogatories and answers thereto, as written down, were read over to the said witnesses, and thereupon the same *was* signed and sworn to by the said deponents, Jonas H. Monheimer and Marcus H. Monheimer, at the place and on the day and year last aforesaid.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal this 18th day of October, A. D. 1888.

(Signed) CHAS. EDGAR MILLS,
Commissioner for Colorado in New York,
115 & 117 *Broadway, N. Y. City.*

Fees for executing this commission, $15.00, paid by def'ts.
C. E. MILLS,
Commissioner.

Charles Edgar Mills, notary and commissioner for all the States and Territories, 115 Broadway, N. Y.

(Indorsed:) In the circuit court of the United States for the district of Colorado. Daniel K. Tenney *et al.*, complainants, *vs.* Samuel Rich *et al.* Maurice L. Leopold *et al. vs.* Samuel Rich *et al.* Depositions of Jonas H. Monheimer and Marcus H. Monheimer for defendants. Filed in master's office Oct. 25, 1888. (S'g'd) J. W. Webster, master. Filed Dec. 28, 1888. William A. Willard, clerk. Filed Dec. 28, 1888. (S'g'd) William A. Willard, clerk. Charles Edgar Mills, notary and commissioner for all the States and Territories, 115 Broadway, N. Y.

515 And afterwards and on, to wit, the 14th day of January, A. D. 1889, came Bernard Cahn, Charles Cahn, Joseph Cahn, Louis Wampold, and David Wallach, copartners, &c., as Cahn, Wampold & Co., by D. C. Lyles, Esq., their solicitor, and filed in said court and in said cause their petition for leave to become parties to the bill of complaint heretofore filed herein; and the said petition is in words and figures as follows, to wit:

Petition of Cahn et al. to be Made Complainants.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States, Sitting within and for the District of Colorado.

DANIEL K. TENNEY *et al.*, Complainants, }
vs. }
SAMUEL RICH *et al.*, Defendants. }

To the honorable judge of said court:

The petition of Bernard Cahn, Charles Cahn, Joseph Cahn, Lewis Wampold, and David Wallach, copartners doing business at the city of Chicago, in the State of Illinois, under the firm name of Cahn, Wampold & Co., respectfully shows that on the 29th day of March, A. D. 1887, your petitioners brought suit in attachment against the above-named defendant, Samuel Rich, to recover the sum of five hundred and sixty-four dollars ($564.00), then due and owing by the said Rich to your petitioners for goods, wares, and merchandise theretofore sold and delivered by your petition-
516 ers to the said Rich, at his request and instance, between the first day of January and the twenty-third day of March, A. D. 1887; that summons was duly issued and personally served, on the twenty-ninth day of March, A. D. 1887, by the sheriff of Lake county, on the above-named defendant, Samuel Rich, and on the same day a writ of attachment issued in said cause and was served, at the city of Leadville, upon the said Rich, and at the same time and place a notice of garnishment, together with a copy of said writ, on David May and Adolph Hirsch, and thereafter and on the 12th day of April, A. D. 1887, judgment was obtained in the suit of your petitioners in said county court against the said Samuel Rich for the sum of five hundred and sixty-four dollars and costs of suit, as will more fully and at large appear in and by the transcript of said judgment, proceedings, and process in said cause hereto attached and made a part hereof; that at the time of the commencement of this action and the issuance of the process aforesaid the stock of goods, wares, and merchandise and other property and effects of the said Samuel Rich had been assigned, as your petitioners are informed and verily believe, by the said Rich to the said May & Hirsch by means of a certain written instrument purporting to be a chattel mortgage, and at that time the said May & Hirsch or one of them held said property and effects, by virtue of such assignment, for the use and benefit of the then creditors of the said Samuel Rich, among whom were and are your petitioners.

Your petitioners are informed and believe that this honorable court has decided that the certain pretended and so-called chattel mortgage aforesaid so executed *to* the said Rich to the said May & Hirsch was in law an assignment for
517 the benefit of all the creditors of the said Rich, and that the

above-entitled case was shortly thereafter referred to J. W. Webster, a master in chancery, to take the testimony and report to this honorable court of all the claims against the defendant and the facts with reference to the value of the stock of goods and other property so assigned by the said Rich to the said May & Hirsch, and that the said master has made his report thereon in some of the cases, but, as your petitioners are informed and believe, not in all, and that the proceeds from the property so mortgaged and assigned as aforesaid by the said Rich to the said May & Hirsch have not been distributed, but the same remain in the registry and within the power and control of this court; that the said Rich has no property other than that which has been assigned as aforesaid by him to the said May & Hirsch, and that if your petitioners be not allowed to share *pro rata* with the other creditors of the said Rich in the proceeds thereof they will lose their claim and judgment against him.

Wherefore your petitioners pray that an order may be made and entered herein allowing them to come in and prove their claim before the said master, and that an order or decree may be made herein declaring that they are entitled to share *pro rata* with all other creditors of the said Rich *and* this cause and the proceed- to be realized therefrom, and that they may have such other order or relief herein as may be according to the course in like cases and as shall be according to equity and justice.

518 STATE OF COLORADO, } *ss*:
County of Lake, }

D. C. Lyles, being duly sworn, says that he is the attorney for the above-named petitioners; that he has read the said petition and knows the contents thereof, and that the matters therein stated are true to the best of his knowledge, information, and belief; that the petitioners are not nor is either of them within this district nor within the State of Colorado, as he is informed and believes, and that therefore he verifies this petition for and on behalf of the above-named petitioners.

(Signed) D. C. LYLES.

Sworn to before me this 11th day of January, 1889.

[SEAL.] (Signed) EDMUND FENCH,
Notary Public.

Com. expires Aug. 30, 1892.

(Indorsed:) United States of America, district of Colorado. Daniel E. Tenney *et al.*, complainants, *vs.* Samuel Rich *et al.*, defendants. Petition of Cahn, Wampold & Co.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States, Sitting within and for the District of Colorado.

519 DANIEL K. TENNEY *et al.*, Complainants, }
vs.
SAMUEL RICH *et al.*, Defendants. }

D. C. Lyles, being first duly sworn, says that shortly prior to the 29th day of March, A. D. 1887, the within-named petitioners, then and now doing business under the firm name of Cahn, Wampold & Co., at the city of Chicago, State of Illinois, mailed to him for collection their certain claim against the defendant Samuel Rich for five hundred and sixty-four dollars ($564.00), requesting affiant at the same time to bring suit in attachment, if necessary, to enforce the collection thereof, and immediately upon receipt of such claim affiant commenced the suit in attachment on behalf of the within-named petitioners against the defendant Samuel Rich in the county court of Lake county, Colorado, and caused the said Rich to be duly summoned and the said May & Hirsch, defendants in the above-entitled cause, to be served with a copy of the writ of attachment and a notice of garnishment issued in said attachment suit, and that thereafter and on the 12th day of April, A. D. 1887, obtained and caused to be entered judgment in favor of the said Cahn, Wampold & Co. in said attachment suit for the full amount of their said claims, together with costs; that as soon as affiant was apprised of the fact that this honorable court had decided in the above-entitled cause that the certain instrument in writing, purporting to be a chattel mortgage from the defendant Samuel Rich to the said May & Hirsch, amounted to and was in law an assignment for the benefit of all the then creditors of the said Rich he had a con-
520 versation with A. T. Gunnel, Esq., one of the attorneys of the defendant in said cause, and understood from him, the said Gunnell, that the defendants therein proposed to and would appeal from the judgment of this honorable court in the premises, and that thereupon all proceedings therein would be stayed, but that if the said defendants elected not to so appeal he would advise affiant in order to give him an opportunity in due season to present the said claim of the said Cahn, Wampold & Co. for allowance in this cause; that early in the month of November, 1888, affiant was called East upon business of urgency and considerable importance and did not return to his home in the city of Leadville until on or about the 19th day of December, 1888, and was not advised in the meantime what, if any, proceedings had been taken in said cause; that immediately upon his return his wife was taken very ill and he was obliged to devote almost his whole time and attention to caring for her until a few days ago, when he learned for the first time that the above-entitled cause had been referred to a master to take the testimony and report to this court all of the claims against the defendant Rich and the fact with reference to the value of the property

assigned by the said Rich to the defendants, May & Hirsch; that as soon as practicable thereafter he caused to be prepared the petition of the said Cahn, Wampold & Co. and the transcript of the record and judgment in the said attachment suit, which are hereto attached in order that the same might be duly and speedily presented in this honorable court.

Affiant further says that he is informed and believes that the total amount of the claims of the creditors against the said Rich is about sixty thousand dollars ($60,000), and that the total value of the property so attemp-ed to be mortgaged, but in fact assigned as afore-
521 said, amounts to about thirty thousand dollars ($30,000), and that the allowance of the claim of the petitioners herein will not affect the defendants in this cause nor materially affect the complainants herein when the said claim is proportioned to the amount of all the claims of the creditors and all the property of the said Rich so assigned to the said May & Hirsch; that your affiant is informed and believes that the said Rich has no property out of which the claim and judgment of your petitioners can be realized, save and except that which has been assigned to the said May & Hirsch, and that if the claim of these petitioners be not allowed the same will be wholly lost to them.

(Signed) D. C. LYLES.

Subscribed and swirn to before me this 11th day of January, A. D. 1889.

(Signed) EDMUND FRENCH,
[SEAL.] *Notary Public.*

Commission expires Aug. 30, 1892.

County Court, Lake County.

UNITED STATES OF AMERICA:

STATE OF COLORADO, } ss:
County of Lake, }

Pleas before the Honorable Geo. S. Phelps, judge of the county court within and for the county of Lake, in the State of Colorado, at a term thereof begun and holden at the court-house, in the
522 city of Leadville, in said county, on the first Monday (it being the 7th day) of March, A. D. 1887.

Present: Hon. Geo. S. Phelps, judge of said court; Jos. A. Lamping, sheriff of said county; Geo. S. Phelps, acting clerk of said court.

Affidavit in Attachment. *Code, Revised* 1885, 2381.

STATE OF COLORADO, } ss:
County of Lake, }

In the County Court within and for the County of Lake and State Aforesaid.

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, LOUIS WAMPOLD, and David Wallach, Copartners as Cahn, Wampold & Co., Plaintiff-,

vs.

SAMUEL RICH, Defendant.

D. C. Lyle, of said county, being duly sworn, doth depose and say that he is one of the attorneys of the plaintiffs in the above-entitled action, and that Samuel Rich, of the county of Lake and State of Colorado, is justly indebted to the plaintiffs to the amount of five hundred and sixty-four dollars, lawful money of the United States, and that the said demand is upon an express contract, is due and unpaid, and that this action is brought upon a book account.

That the defendant has fraudulently transferred and as-
523 signed his property and effects so as to hinder and delay his creditors and these plaintiffs.

That the defendant has fraudulently disposed of his property and effects so as to hinder and delay his creditors and their plainti-s.

D. C. LYLES.

Subscribed and sworn to before me this 26th day of March, A. D. 1887.

JAMES B. KNOBLOCK,
[SEAL.] *Notary Public.*

(Indorsed:) Gen. No., 4455. Affidavit in attachment. Bernard Cahn, Charles Cahn, Joseph Cahn, Louis Wampold, and David Wallach, copartners as Cahn, Wampold & Co., *vs.* Samuel Rich. Filed 29th day of March, 1887. Geo. S. Phelps, Co. judge and clerk.

STATE OF COLORADO, } ss:
County of Lake, }

In the County Court of Lake Co., Colorado.

BERNARD CAHN *et al.*, Plaintiffs,
vs.
SAMUEL RICH, Defendant.

I do hereby enter myself security for costs in the case and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, pursuant to the laws of this State.

524 CHAS. SANDS.

Dated at Leadville, Colorado, this 29th day of March, A. D. 1887.

(Indorsed:) No. 4455. Bernard Cahn, &c., *vs.* Samuel Rich. Bond for costs. Filed and approved March 29, 1887. George S. Phelps, Co. judge and clerk.

Undertaking on Attachment.

County Court.

STATE OF COLORADO, } ss:
County of Lake, }

In the County Court within and for the County of Lake Aforesaid.

BERNARD CAHN, CHARLES CAHN, Joseph Cahn, Louis Wampold, and David Wallach, Copartners as Cahn, Wampold and Company, Plaintiff-, *vs.* SAMUEL RICH, Defendant. } Undertaking on Attachment.

Whereas the above-named plaintiff is about to commence an action in the county court, in the fifth judicial district of the State of Colorado in and for the said county of Lake, against the above-named defendant, upon a contract for the direct payment of money, claiming that there is due to the said plaintiffs from the said defendant the sum of five hundred and sixty-four dollars of the United States, and is about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein:

525 Now, therefore, we, the undersigned, residents of the county of Lake, State of Colorado, in consideration of the premises and of the issuing of said attachment, do jointly and severally undertake in the sum of eleven hundred and fifty dollars and promise to the effect that if the said defendant recover judgment in said action, or if the said court shall finally decide that the plaintiff was not entitled to an attachment, the said plaintiff will pay all costs that may be awarded to the said defendant and all damages which he may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of eleven hundred and fifty dollars.

Dated this 26th day of March, A. D. 1887.

CHAS. SANDS.
D. C. LYLES.

STATE OF COLORADO, } ss:
County of Lake, }

Charles Sands and D. C. Lyles, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself says that he is a resident within the said Lake county, and that he is worth the sum specified in the said undertaking as

the penalty thereof, over and above his just debts and liabilities, in real property not by law exempt from execution in this State.

CHAS. SANDS.
D. C. LYLES.

Subscribed and sworn to before me this 29th day of March, A. D. 1887.

JAMES B. KNOBLOCK,
[SEAL.] *Notary Public.*

526 (Indorsed:) No. 4455. County court, Lake county. Bernard Cahn, Charles Cahn, Joseph Cahn, Louis Wampold, and David Wallach, copartners as Cahn, Wampold & Co., plaintiffs, *vs.* Samuel Rich, defendant. Undertaking on attachment. Approved and filed this 29th day of Marc*y*, 1887. Geo. S. Phelps, county judge & clerk.

Attachment Writ.

STATE OF COLORADO, } *ss:*
Lake County, }

In the County Court within and for the County of Lake Aforesaid, to the Term A. D. 188–.

BERNARD CAHN, CHARLES CAHN, JOSEPH Cahn, Louis Wampold, and David Wallach, Copartners Doing Business under the Firm Name of Cahn, Wampold & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant. } Writ of Attachment.

The People of the State of Colorado to the sheriff of said county of Lake, Greeting:

Whereas the above-entitled action was commenced in the county court within and for the said county of Lake by the plaintiffs in the said action to recover from the defendant above named in the said action the sum of five hundred sixty-four and $\frac{00}{100}$ dollars of the United States, besides interest, at the rate of — per cent. per —, from the 29th day of March, A. D. 1887, and costs of suit,
527 and the ne-essary affidavit and undertaking herein having been filed as require by law:

Now we do therefore command you, the said sheriff, that you serve a copy hereof on the above defendant, if he be found in your county, and also attach and safely keep all the property of said defendant within your said county not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiffs' demand, as above mentioned, unless the said defendant deposit with you an amount or give you security by at least two sufficient sureties in an amount sufficient to satisfy such demand, beside costs, or in an amount equal to the value of the property which has been

or is about to be attached, in which case you will take such undertaking, and hereof make due and legal service and return.

Witness Geo. D. Phelps, judge and clerk of said court, [SEAL.] and the seal thereof, at Leadville aforesaid, this 29th day of March, A. D. 1887.

GEO. S. PHELPS,
Judge & Clerk.

(Original indorsed:) No. 4455. County court, Lake county. Cahn, Wampold —, plaintiffs, *vs.* Samuel Rich, defendant. Writ of attachment. Sheriff's fees: Service, $1.50; mileage, .60; 2 garnishees, $3.00; total, $5.10. J. A. Lamping, sheriff; J. H. Korty, deputy. Filed April 2nd, 1887. Geo. S. Phelps, Co. judge and clerk.

STATE OF COLORADO, } *ss:*
County of Lake, }

I do hereby certify that I have duly executed the within writ on this 29th day of March, A. D. 1887, at Leadville, in the county and State aforesaid, by personally delivering a true copy to the within-named defendant, Samuel Rich, and serving a notice
528 of garnishee on David May and Adolph Hirsch. For answers see notice of garnishees, hereto attached.

J. A. LAMPING, *Sheriff.*
J. H. KORTY, *Dep.*

Garnishee Writ and Interrogatories, Revised 1887.

STATE OF COLORADO, } *ss:*
County of Lake, }

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, LOUIS WAMPOLD, and David Wallach, Copartners Doing Business under the Firm Name of Cahn, Wampold and Co., Plaintiffs,
vs.
SAMUEL RICH, Defendant.

The People of the State of Colorado to A. Hirsch, garnishee:

You are hereby notified that you are attached as garnishee in the above-entitled action, and you are required not to pay any debt due or to become due from yourself to the said defendant or either of them, and that you must retain possession and control of all personal property, effects, choses in action, of said Samuel Rich, defendant, in order that the same may be dealt with according to law; and you are hereby commanded to be and appear before the county court, at Leadville, on the 11th day of April, 1887, at ten o'clock a. m., to answer what may be objected against you in that behalf.

J. A. LAMPING, *Sheriff.*
J. H. KORTY, *Dep. Sheriff.*

529 1. Are you in any manner indebted to the defendant, either — property or money, and is the same now due; if not due, when is the same to become due? State fully all particulars.

Answer. No, except as hereinafter stated.

2. Have you in your posses-ion, in your charge, or under your control any property, effects, goods, chattel-, rights, credits, or choses in action of said defendant or either of them, or in which he is interested? If so, state what is the value of the same and state fully all particulars.

Answer. I have, jointly with David May, possession under a mortgage of the stock of goods at No. 313 Harrison Ave., supposed to be worth about $20,000.00. I cannot now state what will be due after the mortgage is satisfied, if anything.

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, effect-, goods, chattels, rights, credits, or choses in action belonging to him or in which he is interested and now in the possession or under the control of others? If so, state the particulars.

Answer. No.

—— ——, *Garnishee.*

I, A. Hirsch, do solemnly swear that the answer to the foregoing interrogatories by me subscribed are true, so help me God.

A. HIRCH, *Garnishee.*

Subscribed and sworn to before me this 2nd day of April, 1887.

J. H. KORTY, *Dep. Sheriff.*

530 *Garnishee Writ and Interrogatories, Revised* 1887.

STATE OF COLORADO, } *ss:*
County of Lake, }

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, LOUIS WAMPOLD, and David Wallach, Copartners Doing Business under the Firm Name of Cahn, Wampold & Co., Plaintiffs,

vs.

SAMUEL RICH, Defendant.

The People of the State of Colorado to David May, garnishee:

You are hereby notified that you are attached as garnishee in the above-entitled action, and you are required not to pay any debt due or to become due from yourself to the said defendant, and that you must retain possession and control of all personal property, effect-, choses in action of said Samuel Rich, defendant, or either of them, in order that the same may be dealt with according to law, and you are hereby commanded to be and appear before the county court of Leadville on the 11th day of April, 1887, at ten o'clock a. m., to answer what may be objected against you in that behalf.

(Signed) J. A. LAMPING, *Sheriff.*

(Signed) J. H. KORTY,
Deputy Sheriff.

1. Are you in any manner indebted to the defendant, either property or money, and is the same now due; if not due, when is the same to become due? State fully all particulars.

Answer. No; except as hereinafter stated.

531 2. Have you in your possession, in your charge, or under your control any property, effect-, goods, chattels, rights, credits, or choses in action of said defendant or either of them or in which he — interested; if so, what is the value of the same? And state fully all particulars.

Answer. I have, jointly with A. Hirsch, possession under a mortgage of the stock of goods at No. 313 Harrison Ave., supposed to be worth about $20,000.00. I cannot now state what will be due after the mortgage is satisfied, if anything.

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, effects, goods, chattels, rights, credits, or choses in action belonging to or in which he — interested and now in the possession or under the control of others? If so, state the particulars.

Answer. No.

—— ——, *Garnishee.*

I, David May, do solemnly swear that the answers to the foregoing interrogatories by me subscribed are true, so help me God.

DAVID MAY, *Garnishee.*

Subscribed and sworn to before me this 2nd day of April, 1887.

J. H. KORTY,
Deputy Sheriff.

532 STATE OF COLORADO, } *ss:*
County of Lake, }

In the County Court of Lake County, State of Colorado.

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, LEWIS Wampold, and David Wallach, Copartners Doing Business under the Firm Name of "Cahn, Wampold & Co.," Plaintiffs,

vs.

SAMUEL RICH, Defendant.

} Complaint.

The plaintiffs complain and allege—

First. That the plaintiffs are and were at all the times herein mentioned copartners doing business in the city of Chicago and State of Illinois under the firm name of "Cahn, Wampold and Co."

Second. That the defendant is indebted to the plaintiffs in the sum of five hundred and sixty-four dollars ($564.00) for goods, wares, and merchandise sold and delivered by the plaintiffs to the defendant at his instance and request between the 1st day of January and 23rd day of March, A. D. 1887.

Third. That the defendant has not paid said indebtedness nor any part thereof, notwithstanding his promise so to do and notwithstanding demand for the payment thereof by the plaintiffs, and

that the amount herein involved does not exceed two thousand dollars.

533 Wherefore plaintiffs demand judgment against the defendant for the sum of $564, and for costs of suit.

PARSONS & LYLES,
Att'ys for Plaintiffs.

(Indorsed:) No. 4455. County court of Lake county. Bernard Cahn *et al. vs.* Samuel Rich. Complaint. Filed March 29, 1887. Geo. S. Phelps, Co. judge & clerk.

STATE OF COLORADO, } *ss:*
County of Lake, }

In the County Court of the County of Lake and State of Colorado.

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, LOUIS Wampold, and David Wallach, Copartners as Cahn, Wampold & Co., Plaintiffs,
vs.
SAMUEL RICH, Defendant.
} Summons.

The People of the State of Colorado send greeting to the above-named defendant:

You are hereby summoned and required to answer the complaint in the action which is filed in the office of the clerk of the county court within and for the county of Lake, State of Colorado, on the second Monday after service hereof, exclusive of the day of service, if served within this county, or if served out of this county,

534 but within this judicial district, then on the third Monday thereafter, exclusive of the day of service, or if served out of this judicial district, but within the State of Colorado, then on the fifth Monday thereafter, exclusive of the day of service.

And you are required to answer the complaint within the time hereinbefore specified, or if you fail so to answer judgment will be taken against you according to the prayer of the complaint, to wit, for the sum of five hundred and sixty-four dollars ($564), and for costs of suit; and you are hereby notified that if you fail to answer the complaint within the time herein specified that the plaintiffs will take judgment against you for the sum specified in said complaint, to wit, for the sum of five hundred and sixty dollars, and for costs of suit.

And you are hereby notified to serve a copy of your answer on the undersigned, at their office, over the Carbonate bank, corner of 4th street and Harrison Ave., in the city of Leadville, county of Lake and State of Colorado, on or before the time hereinbefore mentioned.

The general nature of this action is and the same is brought to recover the sum of five hundred and sixty-four dollars ($564.00) for goods, wares, and merchandise sold and deliver-d by the plaintiff to the defendant, at his instance and request, between the 1st day of January, A. D. 1887, and the 23rd day of March, A. D. 1887, and

that the defendant has not paid said indebtedness nor any part thereof, notwithstanding his promise so to do, payment thereof having been demanded.

C. C. PARSONS & D. C. LYLES,
Doing Business as Law-ers under the Firm Name of "Parsons & Lyles," Attorneys for Plaintiffs.

535 Office over the Carbonate bank, corner of 4th street and Harrison Ave., city of Leadville, county of Lake and State of Colorado.

STATE OF COLORADO, } *ss:*
County of Lake, }

I do hereby certify that I have duly executed this summons on this 29th day of March, A. D. 1887, by personally delivering a true copy to the within-named defendant, Samuel Rich, at Leadville, county and State aforesaid.

J. A. LAMPING, *Sheriff.*
J. H. KORTY, *Dep.*

(Indorsed:) No. 4455. County court of Lake county. Bernard Cahn *et al. vs.* Samuel Rich. Sheriff's fees: Service, $1.00; mil., 20—$1.20. Summons. Filed April 2nd, 1887. Geo. S. Phelps, Co. judge and clerk. Charles C. Parsons & D. C. Lyles, doing business as Parsons & Lyles.

Be it remembered that heretofore and on, to wit, Tuesday, April 12, A. D. 1887, the same being one of the regular juridical days of the March term, A. D. 1887, of said county court, the following proceedings were had, *inter alia*, and entered on record, to wit:

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, Lewis Wampold, and David Wallach, Copartners Doing Business under the Firm Name of Cahn, Wampold & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendant.	Attachment. 4455.

536 And now, on this day, come the plaintiffs by their attorneys, Parsons & Lyles, no one appearing for the defendant, and thereupon plaintiffs, by attorneys, enter their motion for a default herein against the defendant, both as to the attachment and merits of this action; and it appearing to the court from the summons and writ of attachment issued herein and the return thereon endorsed that the defendant has been duly and personally served in Lake county with both said summons and writ; and it further appearing to the court that said def-ndant has failed to plead, answer, or demur to plaintiffs' complaint filed herein, although the time within which so to do has long since expired; and it further appearing that said defendant has failed to traverse the affidavit for attachment filed herein, as required by law:

It is therefore ordered by the court that said motion be sustained,

and that the default of said defendant both as to the attachment and the merits of this action be, and the same is hereby, entered of record.

And thereupon this cause comes on for hearing and trial, a jury being waived, and the same being submitted to the court, and the court, having heard the evidence adduced, doth find that the defendant is indebted to the plaintiffs as alleged in the complaint herein, and doth assess plaintiffs' damages at the sum of five hundred sixty-four and $\frac{00}{100}$ dollars ($564.00).

And that rebate of interest is due the defendant until the first day of May, A. D. 1887.

It is therefore considered, ordered, and adjudged by the court that said plaintiffs, Bernard Cahn, Charles Cahn, Joseph Cahn, Louis Wampold, and David Wallach, copartners doing business
537 under the firm name of Cahn, Wampold & Co., do have and recover of and from the defendant the said sum of five hundred and sixty-four dollars, their damages aforesaid assessed, with interest rebated until the first day of May, A. D. 1887, together with their costs herein about this suit expended, and that they have execution therefor.

And it is further ordered that the attachment herein be, and the same is hereby, sustained; and it is further ordered that this cause stand continued as to the garnishees herein.

GEO. S. PHELPS,
County Judge.

Be it remembered that afterwards, to wit, on Monday, April 18th, A. D. 1887, the same being one of the regular juridical days of said March term, A. D. 1887, of said court, the following other proceedings, *inter alia*, were had and entered on record in said cause, to wit:

BERNARD CAHN, CHARLES CAHN, JOSEPH CAHN, Lewis Wampold, and David Wallach, Copartners Doing Business under the Firm Name of Cahn, Wampold & Co., Plaintiffs, *vs.* SAMUEL RICH, Defendants.	Attachment. 4455.

And now, on this day, on motion, it is ordered by the court that the time for answer of garnishees herein be, and the same is, extended until Monday, April 25th, A. D. 1887.

(Signed) GEO. S. PHELPS,
County Judge.

I, George S. Phelps, judge and clerk of the county court
538 of Lake county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all orders, judgment, and record entered, together with true copies of all original papers issued aforesaid, in a certain cause lately pending in said court wherein Bernard Cahn *et al.* were plaintiffs and Samuel Rich was defendant.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said court, at Leadville, this 11th day of January, A. D. 1889.

(Signed) GEO. S. PHELPS,
Judge & Clerk.

Total costs	$22 65
Paid by pl't'ff	12 50
	$10 15

Attest: GEO. S. PHELPS, *Clerk.*

Endorsed: 2149. Petition of Bernard Cahn *et al.* to be allowed to prorate. Daniel K. Tenney *vs.* Samuel Rich. Filed this 4th day of January, A. D. 1889. (S'g'd) William A. Willard, clerk, by F. W. Tupper, deputy clerk.

And afterwards and on, to wit, the 15th day of January, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1889, of said court—present, the Honorable David J. Brewer, circuit judge—the following further proceedings were had and entered of record in said court and in said cause, to wit:

Order: Leave to Cahn et al. to File Petition.

DANIEL K. TENNEY *vs.* SAMUEL RICH *et al.* } 2149. Creditors' Bill for Relief. In Chancery.

539 Now, on this day, comes C. S. Thomas, Esq., and presents to the court the transcript of a judgment from the district court in and for the county of Lake and State of Colorado; which said transcript purports to be a judgment obtained by Bernard Cayn, Charles Cahn, Joseph Cahn, Lewis Wampold, and David Wallach, copartners as Cahn, Wampold & Co., against the said defendant Rich, together with a stipulation and agreement, signed by the solicitor for the plaintiff- and the solicitor for the defendant, consenting that the said transcript may be filed and the claim of the said Cahn, Wampold & Company against the said Rich be allowed; and thereupon Geo. H. Kohn, Esq., representing certain other creditors whose claims have been filed in said cause, objects to the allowing of said claim in behalf of said other creditors.

It is thereupon ordered that the said transcript and stipulation may be filed, subject to any objections which may be made to the allowance thereof by other creditoes of the said Rich whose claims have been allowed, provided said objections be filed to the allowance thereof within fifteen days from the date of this order.

And afterwards and on, to wit, the 16th day of January, A. D. 1889, came H. M. Heineman, by Messrs. Morrison & Kohn, his solicitors,

and filed in said court and in said cause his petition for leave to become a party to the bill of complaint heretofore filed herein; and the said petition is in words and figures as follows, to wit:

540 *Petition of Heineman to be Made Complainant.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

DANIEL K. TENNEY *et al.*
v.
SAMUEL RICH *et al.*
} In Chancery.
MORRIS LEOPOLD *et al.*
v.
SAMUEL RICH *et al.*

To the honorable the judges of the circuit court of the United States, eighth circuit, within and for the district of Colorado, in chancery sitting:

The petition of H. M. Heineman respectfully shows unto your honors—

That on the 30th day of August, A. D. 1888, upon a hearing of this cause an order was enter- herein providing, among other things, that all creditors of the above-named defendant, Samuel Rich, who were such prior to the 24th day of March, A. D. 1888, might become parties to this cause and share *pro rata* in the property conveyed on that date by said Rich to the defendants May & Hirsch, and that the cause be referred to John W. Webster, Esq., one of the masters in chancery of this court, to take testimony to determine, among other things, the amount of the demands of said creditors of
541 said Rich who might seek to become parties to said cause.

That your petitioner, H. M. Heineman, is desirous of becoming a party to said cause and sharing in the avails of the property which, by the judgment of this court, is subject to the claims of the creditors of said Samuel Rich upon sharing with the plaintiffs in the above-entitled cause the costs incurred in said action.

Your petitioner, H. M. Heineman, respectfully represents that at the times herein mentioned he was and still is a resident and citizen of the State of California, and that during all of said times the defendants, Samuel Rich, David May, and A. Hirsch, were and still are residents and citizens of the State of Colorado.

That on, to wit, the 15th day of January, A. D. 1887, the said H. M. Heineman sold and delivered to the defendant Samuel Rich, at, to wit, the city of San Francisco, California, at said Rich's instance and request, goods and merchandise, to wit, gloves, at the price and of the value of $536.75, which the defendant Rich then and there promised and agreed to pay.

That the said Rich did fail to pay the said sum of $536.75 and every part thereof, and subsequently and on, to wit, the 19th day of April, A. D. 1887, the said H. M. Heineman did duly recover a judgment in the county court of Lake county, in the State of Colorado, against the said Samuel Rich in the sum of $536.75 upon the demand hereinbefore set forth.

That the said judgment so recovered remains wholly unsatisfied and in full force and has neither been appealed from nor reversed.

Wherefore your petitioner prays that an order be entered
542 herein joining your petitioner as a party to this cause and entitled to participate *pro rata* in the avails of the property conveyed by said Rich to said May & Hirsch to the amount of his judgment, to wit, the sum of $536.75, your petitioner hereby offering to contribute *pro rata* with plaintiffs his just proportion of the expenses of the litigation.

(Signed) MORRISON & KOHN,
Att'ys for Petitioner.

STATE OF COLORADO, }
County of Arapahoe, } *ss:*

George H. Kohn, being duly sworn, on his oath deposes and says he is one of the attorneys of H. M. Heineman in the above-entitled cause; that the matters in the foregoing petition set forth are true of his own knowledge except the matters therein stated on information and belief, and as to such matters he believes it to be true; that the reason why this verification is not made by the petitioner but by affiant is that petitioner is not a resident of the State of Colorado, where affiant resides, but is a resident and citizen of the State of California.

(Signed) GEORGE H. KOHN.

Subscribed and sworn to before me this 21st day of November, A. D. 1888.

(Signed) EMILIO D. DE SOTO,
[SEAL.] *Notary Public.*

(Indorsed:) 2149. Equity. Circuit court U. S. Daniel K. Tenney *et al. vs.* Samuel Rich *et al.* Petition of H. M. Heineman. Filed Jan. 16, 1889. William A. Willard, clerk. Morrison & Kohn, att'ys for petitioners.

543 And afterwards and on, to wit, the 26th day of January, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order Extending Time for Filing Exceptions to Master's Report.

DANIEL K. TENNEY
vs.
SAMUEL RICH *et al.* } 2149. Creditors' Bill for Relief.

At this day come the said defendants, by A. S. Blake, Esq., their solicitor, and, on their motion, it is ordered by the court that the time for filing exceptions to the master's report herein be, and is hereby, extended ten days from this day.

And afterwards and on, to wit, the 5th day of February, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order Extending Time for Filing Exceptions to Master's Report.

544 DANIEL K. TENNEY *et al.*
vs.
SAMUEL RICH *et al.* } 2149. Creditors' Bill for Relief.

Now, on this fifth day of February, A. D. 1889, by consent of counsel, it is ordered that the master, John W. Webster, be allowed, and he is hereby ordered, to make and file a supplemental report in the above-entitled cause embracing claims of Brown Brothers and Cahn, Wampold & Co.

And it is further ordered that the time allowed the parties to file exceptions to the master's report be extended for ten days from this date.

And afterwards and on, to wit, the 14th day of February, A. D. 1889, came the said defendants, May & Hirsch, by Messrs. A. T. Gunnell and Blake and Sayer, their solicitors, and filed in said court and in said cause their exceptions to the master's report, heretofore filed herein; and the said exceptions are in words and figures as follows, to wit:

Exceptions to Master's Report.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

545

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants,

and

MAURICE L. LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.

Exceptions to the Master's Report by the Defendants May & Hirsch.

First exception.

For that the said master in and by his said report allowed the complainants Maurice L. Leopold, Henry Leopold, and Charles M. Leopold to prove a claim evidenced by and wholly based upon a judgment rendered in their favor and against the defendant Samuel Rich and one Edward Nathan, as copartners, for the sum of thirteen thousand five hundred and eighty-three dollars and fifty-eight cents ($13,583.58), and allowed the same to the said complainants and ordered that it be paid *pro rata* with the claims of the individual creditors of the said Rich, proved and allowed in and by the said report, against the individual estate of the said Rich now being administered in this proceeding, notwithstanding the fact, apparent therefrom as well as from the bill of complaint by the said complainants filed herein and the testimony of the said Samuel Rich in proof of the claim of Alva Adams, in these exceptions hereinafter mentioned, that the said claim was a copartnership liability existing against a copartnership doing business under the firm name and style of Nathan & Company, of which copartnership said Rich was a member; that such copartnership in fact had an existence at the time of the incurring of such liability, and that said judgment was based upon sales made to such copartnership for partner-

546 ship purposes, in aid of partnership business—

Whereas the said master should have rejected the said proof and disallowed the said claim for the reason that there being evidence in the said report and it being apparent therefrom that there exists a large amount of individual indebtedness of the said Rich, due to a great number of individual creditors, which indebtedness is wholly unpaid and which creditors are unsatisfied, and which indebtedness, having been duly proved, allowed, and ordered to be paid in and by the said report, in amount more than equals the whole value of the said estate, whereby upon the payment of which no surplus of the said estate would remain, in which surplus only

could such partnership creditors rightfully share or participate; or, receiving the said evidence and allowing the said claim, the said master should not have ordered it paid *pro rata* with the said claims of such individual creditors, but only from the surplus, if any, after the payment in full of such individual indebtedness *pari passu* with other partnership creditors whose claims have been allowed by the said master and improperly ordered to share *pro rata* in the distribution of the said estate with the claims of individual creditors.

Second exception.

For that the said master in and by his said report allowed one Alva Adams to prove a claim against the said estate in the sum of eleven hundred and ninety-eight dollars and sixty-two cents ($1,198.62), the same being evidenced by and based upon a promissory note executed by the said Samuel Rich and Edward Nathan,
as copartners doing business under the firm name and style of
547 Nathan & Co., to one Nat. Nathan, who indorsed the same to
the said Adams after the maturity thereof, and, withstanding the fact, apparent from the evidence of the said Adams and Samuel Rich, introduced before the said master, in proof of the said claim that the same was partnership liability against the said copartnership of Nathan & Company, of which the said Rich was a member, and not individual liability against the personal estate of the said Rich now herein being administered, allowed the same to the said Adams and ordered that it be paid *pro rata* with the claims of the individual creditors of the said Rich proved before and allowed by him from and out of the said individual estate of the said Rich so being administered as aforesaid—

Whereas the said master should have rejected the said proof and disallowed the said claim for the reason that there being evidence in the said report and it being apparent therefrom that there exists a large amount of individual indebtedness of the said Rich, due to a great number of individual creditors, which indebtedness is wholly unpaid and which creditors are wholly unsatisfied and which indebtedness, having been duly proved, allowed, and ordered to be paid in and by the said report from and out of the said estate, in amount more that equals the whole value of the said estate, whereby upon the payment of which no surplus thereof would remain, in which surplus only could or can such copartnership creditors rightfully share or participate; or, receiving the said evidence and allowing the said claim, the said master should not have ordered it paid *pro rata*
with the said claim of such individual creditors, but only
548 from the surplus, if any, after the payment in full of all such
individual liabilities *pari passa* with other partnership indebtedness the existence of which is shown by the said report.

Third exception.

For that the said master in and by his said report allowed the said Alva Adams to prove a certain other claim against the said estate of the said Rich in the sum of three thousand eight hundred and eighty-four dollars and three cents ($3,884.03), besides interest, evidenced by and based upon a certain check or inland bill of exchange drawn by Messrs. Meyer and Nathan for the purpose of making and which constituted a loan of money to Nathan & Company, a copartnership then existing, of which the said Rich was a member, which said check or inland bill of exchange is set forth and described in Exhibit "C," attached to and made part of said report, to which reference is herein made for greater certainty, and, notwithstanding the fact, apparent from the said report, the said exhibit, the testimony of the said Adams and Rich in proof of the said claim, and the claim mentioned in exception second, herein presented, that the same was a partnership liability against the said copartnership of Nathan & Company and not an individual liability against the personal estate of the said Rich now being administered herein, allowed the same to the said Adams and order-d that it be paid *pro rata* with the claims of the individual creditors of the said Rich proved before and allowed by him from and out of the said individual estate of the said Rich being so administered as aforesaid—

549 Whereas the said master should have rejected the said proof and disallowed the said claim for the reason that there being evidence in the said report and it being apparent therefrom that there exists a large amount of individual indebtedness of the said Rich, due from him individually to a great number of individual creditors, which indebtedness is wholly unpaid and which creditors are wholly unsatisfied and which indebtedness, having been duly proved, allowed, and ordered to be paid in and by the said report from and out of the said estate, in amount more than equals the whole value of the said estate, whereby upon the payment of which no surplus thereof would remain, in which surplus only can or could such partnership creditors rightfully share or participate; or, receiving the said evidence and allowing the said claim, the said master should not have ordered it paid *pro rata* with the said claims of such individual creditors, but only from the surplus, if any, after the payment in full of all such individual liabilities *pari passu* with other partnership indebtedness the existence of which is shown by the said report.

Fourth exception.

For that the said master in and by his said report allowed one Henrietta Metcalfe to prove a certain claim against the said estate of the said Rich, now being administered herein, for the sum of fifteen hundred and thirteen dollars and two cents ($1,513.02), including interest, which claim was a partnership liability against a copartnership then existing and doing business under the firm

name and style of Nathan & Company, of which the said Rich was a member, and, notwithstanding such fact, apparent from the
550 said report and the proof of the said claim that the same was a partnership liability against the said copartnership of Nathan & Company and not an individual liability against the personal estate of the said Rich now being administered herein as aforesaid, al-owed the same to the said Metcalfe and ordered that it be paid *pre rata* with the claims of the individual creditors of the said Rich proved before and allowed by him from and out of the said individual estate of the said Rich—

Whereas the said master should have rejected the said proof and disallowed the said claim for the reason that there being evidence in the said report and it being apparent therefrom that there exists a large amount of individual indebtedness of the said Rich, due from him individually to a great number of individual creditors, which indebtedness is wholly unpaid and which creditors are wholly unsatisfied and which indebtedness, having been duly proved, allowed, and ordered to be paid in and by the said report from and out of the said estate, in amount more than equals the whole value of the said estate, whereby upon the payment of which no surplus thereof would remain, in which surplus only could or can such copartnership creditors rightfully share or participate; or, receiving the said evidence and proof and allowing the said claim, the said master should not have ordered it paid *pro rata* with the said claims of such individual creditors, but only from the surplus, if any, after the payment in full of all such individual liabilities *pari passu* with other partnership indebtedness the existence of which is shown by the said report.

551 Fifth exception.

For that the said master in and by his said report allowed one Rachael Nathan to prove a certain claim against the said estate of the said Rich for the sum of four thousand eight hundred and forty-one dollars and eighty-seven cents ($4,841.87), evidenced, as appears from the said report, by a promissory note executed by the copartnership of Nathan & Company, then existing and doing business under that name and style, composed of Edward Nathan and the said Samuel Rich, signed or indorsed by the said Rachael Nathan, and discounted at the Bank of Leadville, for the benefit of said copartnership, on the 26th day of January, A. D. 1884, the face of the said note being three thousand five hundred dollars ($3,500.00), and, notwithstanding the fact, apparent from the said report and the evidence of the said Rachael Nathan in proof of the said claim that the same was a loan to the said copartnership, not evidenced by any note in writing and constituting a copartnership liability against the said firm and not an individual liability against the said Samuel Rich, allowed the same to the said Rachael Nathan and ordered that it be paid *pro rata* with the claims of the individual creditors of the said Rich proved before and allowed by him from and out of the said individual estate of the said Rich so being administered herein as aforesaid—

Whereas the said master should have rejected the said proof and disallowed the said claim for the reason that there being evidence in the said report and it being apparent therefrom that there exists a large amount of individual indebtedness of the said Rich, due from him individually to a great number of individual creditors,
552 which indebtedness is wholly unpaid and which creditors are wholly unsatisfied, and which indebtedness, having been duly proved, allowed, and ordered to be paid in and by the said report from and out of the said estate, in amount more than equals the entire value of the said estate, whereby upon the payment of which no surplus thereof would remain, in which surplus only could or can such copartnership creditors rightfully share or participate; or, receiving said proofs and allowing said claims, the said master should not have ordered it paid *pro rata* with the said claims of such individual creditors, but only from the surplus, if any, after the payment in full of all such individual liabilities *pari passu* with other partnership indebtedness the existence of which is shown by the said report.

Sixth exception.

For that the said master in and by his said report found that the property with which the defendants May & Hirsch are charged, as assignees for the benefit of creditors, by the decree and judgment of this honorable court brought, at a fairly conducted auction sale, the sum of twenty thousand and one hundred dollars ($20,100.00); that it was inventoried at twenty-two thousand five hundred and fifty-eight dollars and fifty-three cents ($22,558.53); that the evidence of value from and by the opinion of witnesses is very conflicting and not to be relied upon, and the said master therefore asks to be permitted, in arriving at the market value of the said property, "to draw a little from his own experience and observation in about fifty cases, more or less, in bankrupt matters, assignment and chattel-mortgage cases, for the past twenty years, as attorney, coun-
553 selor, solicitor, and assignee," and from such experience and observation, rather than from the evidence in the case, the said master arrives at the conclusion that the market value of the said property with which the defendants May & Hirsch should be charged was, at the time of such public sale, the sum of thirty-three thousand and five hundred dollars ($33,500.00)—

Whereas, a public sale of said property, such as was had thereof, as appears from the said report and the evidence relative thereto, being the regularly recognized, legal, and proper mode of disposing of such property had the defendants May & Hirsc- been assignees thereof for the benefit of creditors in fact, purpose, and intent, as well as by construction of law, and the sale a fair one in the sense that all was obtained for the property that it could be made to bring, a private sale thereof by retail not being sanctioned, neither by the law nor the instrument under which the said defendants acted, it is believed, charged, and most respectfully submitted that the said master should have been guided and controlled, in arriving at the

value of the said property with which the said defendants May & Hirsch should be charged, by the amount which it brought at public sale, and should have found that value to have been twenty thousand and one hundred dollars ($20,100.00); that there is no principle of law or justice that would make the said defendants liable through and by a constructive assignment for that which they would not be liable had the assignment been real.

And it is further respectfully submitted that the said report should be so modified by the appropriate order of this honorable court, by reason of all the matters aforesaid, as that the individual
554 creditors of the said Rich whose claims have been proved and allowed against his personal estate now herein being administe-d shall be first paid therefrom, and that partnership creditors whose claims have been proved and allowed and ordered to be paid *pro rata* with the said claims of individual creditors from the said estate shall be postponed to the said individual creditors and ordered to be paid from the surplus of said estate, if any, after the payment in full of all of the said individual creditors and from no other portion of the said estate except such surplus, and that the said defendants, May & Hirsch, be charged only with the sum which the said property brought at said public sale as such assignees.

All of which is respectfully submitted.

(Signed) BISSELL & GUNNELL AND
BLAKE & SAYER,
Solicitors for Defendants May & Hirsh.

(Indorsed:) No. 2149. United States circuit court. Daniel K. Tenney *et al.*, complainants, *vs.* Samuel Rich *et al.*, defendants, & Maurice L. Leopold *et al.*, complainants, *vs.* Samuel Rich *et al.*, defendants. The defendants May & Hirsch's exceptions to the master'- report. Filed Feb. 14, 1889. (S'g'd) William A. Willard, clerk. A. T. Gunnell and Blake and Sayer, solicitors for May & Hirsch.

And afterwards and on, to wit, the 26th day of February, A. D. 1889, came John W. Webster, Esq., a master in chancery of said court, and filed in said court and in said cause his supplemental report; and the said supplemental report is in words and figures as follows, to wit:

555 *Master's Supplemental Report.*

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court *for* the United States for the District of Colorado.

DANIEL K. TENNEY *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.
MORRIS LEOPOLD *et al.*, Complainants,
vs.
SAMUEL RICH *et al.*, Defendants.
} Master's Supplemental Report.

To the honorable the judges of the circuit court of the United States for the district of Colorado, in chancery presiding:

I, John W. Webster, master in chancery of the said circuit court, to whom, by the order of said court dated the 5th day of February, A. D. 1889, it was referred to make and file a supplemental report in the above-entitled cause, embracing claims of Brown Bros. & Co. and Cahn, Wampold & Co., do most respectfully certify and report unto your honor that the Brown Bros. and Co. claim was not included in my former report for the reason that my attention was not called by counsel to the fact of its having been filed in the clerk's office, supposing that all claims in this case were before me as master. For this reason I did not call at the clerk's office and ascertain it before filing my report, as perhaps I should have
556 done. There was, however, no proof of the claim on file, but I now return herewith a certified copy of the judgment of the county court of Lake county, which is hereto attached, marked Exhibit "1," as proof thereof.

I also further certify and report unto your honor that in my former report in this case I fixed the value of property to be prorated between the claimants in this case as $31,387.00, and that the claims proven amounted to $66,946 75

To which we now add, under the order of the court, claims of Brown Bros. & Co., judgment of county court of Lake county, Colorado, dated April 7th, A. D. 1887, damages and costs	$1,157 55	
Interest on same from April 7th, A. D. 1887, to December 26th, 1888, 1 year 8 months and 18 days, at ten per cent. per annum ..	198 72	
Total		1,356 27

Also claim of Cahn, Wampold & Co., judgment of county court of Lake county, Colorado, April 12th, A. D. 1887, with rebate of interest to May 1st, A. D. 1887, damages and costs	$586 65	
Interest on the same from May 1st, 1887, to December 26th, 1888, one year seven mont-s and twenty-six days, @ ten per cent. per annum	97 13	
Total		683 78
Making total claims proven before me as master, with the interest to date		$68,986 80

Of course, this necessitates the formulating a new *pro rata* decimal by your master, which is as follows:

Pro Rata Decimal.

Total claims.	Value.	Decimal.
$68,986.80	($31,387.00)	.4549711+

Total Amount of Claims as pro Rata Shares under the Orders of the Court to Date.

Names.	Total claims.		Decimal.	Amounts pro rata.
Tenney *et al.*	$15,946 30	×	.4549711+	$7,255 11
Leopold & Co.	13,583 58	×	"	6,180 14
May & Hirsch	21,578 04	×	"	9,817 38
Sweet, Dempster & Co.	2,796 55	×	"	1,272 35
Frankenthal *et al.*	1,604 94	×	"	730 20
Alva Adams	5,082 65	×	"	2,312 46
Mrs. Metcalfe	1,513 02	×	"	688 38
Mrs. Nathan	4,841 67	×	"	2,202 82
Brown Bros. & Co.	1,356 27	×	"	617 06
Cahn, Wampold & Co.	683 78	×	"	311 10
Total claims	$68,986 80		Total value	$31,387 00

557 I further certify and report unto your honor that I have computed the interest on the two additional claims to Dec. 26th, A. D. 1888, the same as the claims are computed in my former report, saving a recomputation of the interest on those claims since that date and the making of entire new totals for the same.

All of which is respectfully submitted.

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Denver, Feb'y 26th, A. D. 1889.

Master's Fees.

2½ days computing additional claims, with interest, and formulating a new *pro rata* decimal and fixing the *pro rata* shares of claims proven, at $10.00 per day		$25 00
Received payment of A. T. Gunnell, for Brown Bros. & Co.	$12 50	
And of D. C. Lyles, Esq., for Cahn, Wampold & Co.	12 50	
	$25 50	

(Signed) JOHN W. WEBSTER,
Master in Chancery.

Denver, February 26th, 1889.

EXHIBIT 1. (Signed) John W. Webster, Master in Chancery.

STATE OF COLORADO, } ss:
County of Lake, }

In the County Court, said County, Friday, April 8th, 1889, March Term, A. D. 1887.

558 L. BROWN, MORRIS BROWN, and B. SCHEIDIMAN, Doing Business under the Firm Name of Brown, Bros. & Co., Plaintiffs,
vs.
SAMUEL RICH, Defendant. } Attachment.

And now, on this day, come the plaintiffs, by their attorneys, no one appearing for the defendant; and thereupon, on motion of plaintiffs' attorney, it is ordered by the court and leave is given the plaintiffs to amend complaint and all papers herein instanter by interlineation as to the amount sued for herein, by making the same eleven hundred thirty-nine $\frac{00}{100}$ dollars, 1,139.00, in lieu of the amount named in said papers, to wit, nine hundred fifteen and $\frac{25}{100}$ dollars, $915.25; and therefore plaintiffs, by attorneys, enter their motion for a default herein against the defendant, both as to the attachment and merits.

And it appearing to the court that the defendant has been duly and personally served with summons and writ of attachment herein, as required by law, and that said defendant has failed to traverse the affidavit for attachment, as required by law, and has also failed to plead, answer, or demur to plaintiffs' complaint filed herein, although the time within which so to do, as required by law, has long since passed:

It is therefore ordered and adjudged by the court that the said motion be sustained, and that the default of said defendant, both as to the attachment and upon the merits of this action, be, and the same is hereby, entered of record.

And thereupon this action comes on for hearing and trial by the court without the intervention of a jury, and the court,
559 having heard the evidence adduced and being now well advised in the premises, doth find that said defendant is indebted to the said plaintiffs as alleged in said complaint, and doth assess the damages of said plaintiffs at the sum of eleven hundred thirty-nine and $\frac{00}{100}$ dollars, $1139.00.

It is therefore considered, ordered, and adjudged by the court that said plaintiffs, L. Brown, Morris Brown, and B. Scheideiman, do have and recover of and from the defendant, Samuel Rich, the said sum of eleven hundred thirty-nine and $\frac{00}{100}$ dollars, $1,139.00, their damages as aforesaid assessed, together with their costs herein about this suit expended, and that execution issue therefor; and it is further ordered that the attachment herein be, and the same is hereby, sustained; and it is further ordered that this cause be continued as to the garnishees herein.

GEO. S. PHELPS,
County Judge.

STATE OF COLORADO, }
County of Lake, } ss:

I, Geo. S. Phelps, judge and clerk of the county court within and for the county and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the record of judgment had, made, and entered in the above-entitled action of Brown Bros. & Co. *vs.* Samuel Rich, on the 8th day of April, A. D. 1887, as the same appears on record in Journal and Judgment Book 7th, at pages 400 & 401, of the records of my said office.

[SEAL.] In testimony whereof witness my hand and the seal of said court, at my office, in the city of Leadville, this 12th
560 day of February, A. D. 1889.

(Signed) GEO. S. PHELPS,
Judge and Clerk.

(Indorsed:) No. 4453. In county court, Lake county. Brown Bros. & Co. *vs.* Samuel Rich. Certified copy of judgment. John Webster, Esq.: This sent you by request of A. T. Gunnell, Esq. (Signed) G. S. Phelps.

(Indorsed:) No. 2149. Daniel K. Tenney *et al. vs.* Samuel Rich *et al.* Master's supplemental report. Filed Feb. 26, 1889. (S'g'd) William A. Willard, clerk.

And afterwards and on, to wit, the 2nd day of March, A. D. 1889, the same being one of the regular juridical days of the November term, A. D. 1888, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Decree. Appeal Prayed.

DANIEL K. TENNEY
vs.
SAMUEL RICH, DAVID MAY, and ADOLPH HIRSCH.

2149. In Chancery.
Creditors' Bill for Relief.

This cause having been heretofore brought to hearing upon the report and the supplemental report (which reports are hereby
561 approved and affirmed) of John W. Webster, a master of chancery in this court, to whom it was referred to ascertain and report concerning the value of the property transferred by the defendants May & Hirsch, and also to ascertain the amount of the several demands of the complainants herein, and of the said May & Hirsch, and of such other creditors as might seek to become parties hereto, and also upon exceptions taken to said report on the part of the said defendants, May & Hirsch, and upon the equity reserved; and, the said cause having been argued by the counsel of the respective parties hereto and due deliberation had thereon, it is hereby ordered, adjudged, and decreed—

That the chattel mortgage mentioned in the defendants' answer herein, given by the said Rich to the said May & Hirsch on March 24th, 1887, is in legal effect an assignment for the benefit of the creditors of the defendant Rich; that the defendants May & Hirsch took the property conveyed by said mortgage as the assignees or trustees of the said defendant, Rich, and as such assignees or trustees of the said Rich shall account to the said creditors for the value of said property as determined and found by the said master in chancery.

That the amount of the demand of the said Tenney *et al.*, the complainants herein, is the sum of $15,946 30
That the amount of the demand of Leopold & Co. is the sum of 13,583 58
That the amount of the demand of May & Hirsch is the sum of 21,578 04
That the amount of the demand of Sweet, Dempster & Co. is the sum of 2,796 55
That the amount of the demand of Frankenthal *et al.* is the sum of 1,604 94
That the amount of the demand of Alva Adams is the sum of 5,082 65
562 That the amount of the demand of Mrs. H. Metcalf is the sum of 1,513 02
That the amount of the demand of Rachael Nathan is the sum of 4,841 67
That the amount of the demand of Brown Bros. & Co. is the sum of 1,356 27
That the amount of the demand of Cahn, Wampold & Co. is the sum of 683 78

It is further ordered, adjudged, and decreed that the value of the property transferred, as aforesaid, on March 24th, A. D. 1887, by the said Rich to the said May & Hirsch, and for which the said May & Hirsch are answerable and responsible as assignees for the benefit of the creditors of the said Rich by virtue of the said transfer, is the sum of $31,387, which sum of $31,387 the said defendants, May & Hirsch, are hereby ordered to distribute and pay to the parties in interest herein in the following proportions, to wit:

To the said Tenney *et al.* the sum of	$7,255 11
To the said Leopold & Co. the sum of	6,180 14
To the said May & Hirsch the sum of	9,817 38
To the said Sweet, Dempster & Co. the sum of	1,272 35
To the said Frankenthal *et al.* the sum of	730 20
To the said Alva Adams the sum of	2,312 46
To the said Mrs. H. Metcalf the sum of	688 38
To the said Mrs. Rachael Nathan the sum of	2,208 82
To the said Brown Bros. & Co. the sum of	617 06
To the said Cahn, Wampold & Co. the sum of	311 10

And it is further ordered, adjudged, and decreed that the said defendants, May & Hirsch, pay the costs in this suit, to be taxed, and that complainants have execution therefor and for the sums above decreed to be paid, as aforesaid, as upon a judgment at law.

And, the defendants May & Hirsch having prayed an appeal to the Supreme Court of the United States, it is ordered that they file a bond, to be approved by the clerk of the court, in the sum
563 of twenty-five thousand dollars, and that execution be stayed under this decree for the period of sixty days.

564 And af-erwards and on, to wit, the 7th day of March, A. D. 1889, came again the said defendants, by their solicitors aforesaid, and filed in said court and in said cause their bond on appeal to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

Appeal Bond.

Bond in appeal or error, United States court, Colorado.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that we, David May and Adolph Hirsch, as principals, and John L. McNeal, L. E. Schonberg, P. W. Burns, M. Hyman, Jacob Boehm, A. F. Grimdel, D. H. Dougan, F. De Mainville, J. V. Holcombe, Sam. Myer, and B. H. De Bois, as sureties, are held and firmly bound unto Daniel K. Tenney, Morris Leopold, Henry Leopold, and Charles M. Leopold in the full and just sum of twenty-five thousand dol-ars ($25,000.00), to be paid to the said Daniel K. Tenney, Morris Leopold, Henry Leopold, and Charles M. Leopold; to which payment, well and truly to

be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at the November term, A. D. 1888, of the circuit court of the United States for the district of Colorado, in two suits pending in said court between Daniel K. Tenney, plaintiff, against Samuel Rich *et al.*, defendants, and Morris Leopold *et al.* against Samuel Rich *et al.*, defendants, and this bond is given to *to*
565 secure the prompt payment to the several parties named in the decree entered in said Tenney case for both of said cases of the several sums mentioned in said decree to be paid; and whereas a decree was rendered against the said David May and Adolph Hirsch, and said May and Hirsch having prayed and been allowed an appeal from said decree to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said David May & Adolph Hirsch shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

(Signed)	DAVID MAY.	[SEAL.]
(Signed)	ADOLPH HIRSCH.	[SEAL.]
(Signed)	JOHN L. McNEIL.	[SEAL.]
(Signed)	L. E. SCHOENBERG.	[SEAL.]
(Signed)	P. W. BREENE.	[SEAL.]
(Signed)	M. HYMAN.	[SEAL.]
(Signed)	JACOB BOHM.	[SEAL.]
(Signed)	A. F. GRIMDEL.	[SEAL.]
(Signed)	D. H. DOUGAN.	[SEAL.]
(Signed)	F. DE MAINVILLE.	
(Signed)	J. V. HOLCOMBE.	
(Signed)	SAM. MAYER.	
(Signed)	B. H. DU BOIS.	

Approved:

(Signed) WILLIAM A. WILLARD, *Clerk.*

Justification.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

John McNeil, L. E. Schoenberg, P. W. Breene, M. Hyam, Jacob Bohm, A. F. Grimdel, D. H. Dougan, F. De Mainville, J. V.
566 Holcombe, Sam. Mayer, D. H. Du Bois, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in money and property the sum below set opposite his name—that is to say:

As to Jacob Boehm	25,000 00 dollars
As to B. H. Du Bois	5,000 00 dollars
As to John L. McNeil	5,000 00 dollars
As to D. H. Dougan	5,000 00 dollars
As to L. E. Schoenberg	5,000 00 dollars
As to A. F. Grundel	20,000 00 dollars
As to P. W. Breene	5,000 00 dollars
As to J. V. Holcombe	20,000 00 dollars
As to M. Hyman	5,000 00
As to Sam. Mayer	5,000 00 dollars
As to F. De Mainvile	5,000 00 dollars

over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(Signed)	JOHN L. McNEIL.	[SEAL.]
(Signed)	L. E. SCHOENBERG.	[SEAL.]
(Signed)	P. W. BREENE.	[SEAL.]
(Signed)	M. HYMAN.	[SEAL.]
(Signed)	JACOB BOEHM.	[SEAL.]
(Signed)	A. F. GRIMDEL.	[SEAL.]
(Signed)	D. H. DOUGAN.	[SEAL.]
(Signed)	F. DE MAINVILLE.	
(Signed)	J. V. HOLCOMBE.	
(Signed)	SAM. MAYER.	
(Signed)	B. H. DU BOIS.	

567 STATE OF COLORADO, } *ss:*
County of Lake, }

The above affidavit was subscribed and sworn to before me this 4th day of March, A. D. 1889, by A. T. Grimdel, F. De Mainville, J. V. Holcombe, Sam. Mayer.

[NOTARIAL SEAL.] (Signed) ALONZO WALKER,
Notary Public.

My commission expires August 7th, 1892.

(Indorsed:) Gen. No. 2149. Circuit court of the United States, district of Colorado. Daniel K. Tenney *vs.* Samuel Rich, David May, *et al.* Bond of appeal, $25,000.00. Filed this 7th day of March, A. D. 1889. (Signed) William A. Willard, clerk.

STATE OF COLORADO, }
Arapahoe County. }

The above affidavit was subscribed and sworn to before me this 7th day of March, A. D. 1889, by D. H. Dougan, John L. McNiel, B. H. Du Bois, L. E. Schoenberg, P. W. Breene, M. Hyman, & Jacob Boehm.

[SEAL.] (Signed) THOMAS W. PORTER,
Notary Public.

My commission expires Feb. 11, 1892.

And afterwards and on, to wit, the 8th day of April, A. D. 1889, came D. K. Tenney, Esq., and Geo. Driggs, Esq., and filed in said court and in said cause a notice of appearance in the Supreme Court of the United States; and the said notice is in words
568 and figures as follows, to wit:

Notice of Appearance in Supreme Court.

United States Circuit Court, District of Colorado. In Chancery.

DANIEL K. TENNEY, Trustee,
vs.
SAMUEL RICH *et al.*

The defendants will please take notice that we have been retained and will appear for the appellee in the above-entitled cause in the Supreme Court of the United States, to which the same has been appealed.

(Signed) D. K. TENNEY.
GEORGE DRIGGS.

April 3rd, 1889.
20 S. La Salle St., Chicago, Ill.

Service of a copy of this notice is hereby acknowledged at Leadville, Colorado, this sixth day of April, 1889.

(Signed) A. S. BLAKE,
A. T. GUNNELL,
Attorneys for Appellants.

(Indorsed:) Circuit court U. S. Daniel K. Tenney *vs.* Samuel Rich *et al.* Notice that D. K. Tenney & Geo. Driggs will appear for appellees in Supreme Court. Filed Apr. 8, 1889. (Signed) William A. Willard, clerk.

569 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

I, William A. Willard, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein Daniel K. Tenney was complainant and David May, Adolph Hirsch, and Samuel Rich were defendants, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 25th day of July, A. D. 1889.

[Seal United States Circuit Court, District of Colorado.]

WILLIAM A. WILLARD, *Clerk*,
By F. W. TUPPER, *Deputy Clerk*.

Endorsed on cover: Case No. 13,652. Colorado C. C. U. S. No. 430. David May and Adolph Hirsch, appellants, *vs.* Daniel K. Tenney. Filed September 25, 1889.

148 U.S. 60

Office Supreme Court U. S.
FILED.
DEC 6 1892
JAMES H. McKENNEY,
CLERK.

IN

The Supreme Court

OF THE

United States.

TO THE OCTOBER TERM, 1892.

DAVID MAY AND ADOLPH HIRSCH,
Appellants,
vs.
DANIEL K. TENNEY,
Appellee.

Term No. 99.
Appeal from the Circuit Court of the United States, within and for the District Court of Colorado.

APPELLANTS' BRIEF.

C. S. THOMAS,
Solicitor for Appellants.

C. J. KELLY, PRINTER, DENVER.

IN

The Supreme Court

OF THE

United States.

TO THE OCTOBER TERM, 1892.

DAVID MAY AND ADOLPH HIRSCH, *Appellants*, vs. DANIEL K. TENNEY, *Appellee*.	*Term No. 99. Appeal from the Circuit Court of the United States, within and for the District Court of Colorado.*

APPELLANTS' BRIEF.

STATEMENT.

This was a proceeding in the Circuit Court of the United States, for the District of Colorado, by bill, invoking the equity powers of the Court to have declared and decreed a conveyance of a stock of goods, by chattel mortgage, a general assignment for the benefit of the creditors of the defendant and mortgagor, Samuel Rich, under and

by virtue of the statute of the State of Colorado, approved April 10, A. D. 1885.

Session Laws of Colorado for 1885, pp. 43–48.

1 Mills' Annotated Colorado Statutes, pp. 453–464, **169–195.

The principal provisions of this statute, and, indeed, all of them involved in this case, aside from those providing *the method* of proceeding thereunder, are in the words and figures following, to wit:

"Any person may make a general assignment of all his property, for the benefit of his creditors, by deed, duly acknowledged, which, when filed for record in the office of the Clerk and Recorder of the county where the assignor resides, or, if a non-resident, where his principal place of business is, in this State, shall vest in the assignee the title to all the property, real and personal, of the assignor, the trust, for the use and benefit of such creditors."

1 Mills' Annotated Colorado Statutes, p. 453; Laws of 1885, p. 43, *1.

* * * "*But nothing in this act contained shall invalidate any conveyance or mortgage of property, real or personal, by the debtor before the assignment, made in good faith, for a valid and valuable consideration.*"

1 Mills' Annotated Colorado Statutes, p. 462, *180; Session Laws of Colorado for 1885, p. 47, *18.

"No such deed of general assignment of property by an insolvent, or in contemplation of insolvency for the benefit of creditors, shall be valid, *unless by its terms* it be made for the benefit of all his creditors, in proportion to the amount of their respective claims."

1 Mills' Annotated Colorado Statutes, p. 457, *171; Session Laws of Colorado for 1885, p. 43, *3.

The bill of complaint substantially alleges, that the defendant, Samuel Rich, being a clothing merchant, possessed of a stock of goods, at Leadville, in the State of Colorado, and being insolvent, and indebted to the defendants, David May and Adolph Hirsch, in, approximately, the sum of eighteen thousand dollars ($18,000), and to other creditors in divers large sums approximating, in the aggregate, the sum of thirty thousand dollars ($30,000), made to the said May and Hirsch a chattel mortgage of the said stock of goods, to secure the payment of the said indebtedness in preference to that payable to the other creditors; that under and by virtue of the said mortgage the said defendants, May and Hirsch, took possession of the said stock of goods and sold the same pursuant to its terms, and from the proceeds paid the said indebtedness to themselves, leaving comparatively nothing with which to satisfy the claims of other creditors, nor to establish the defendant, Rich, in a new business, or in the same business with a new and additional impetus.

As inducement, or for some purpose not very apparent nor germane to the object of the bill of complaint, it is further averred, that the defendants, May and Hirsch, counseled and advised the defendant, Rich, to purchase a portion of the said stock of goods on credit, and that after he had so purchased, they induced him to give the mortgage thereon, as above stated, for the better securing the payment of the said indebtedness to them, by

means of a promise to him, that he should be speedily reinstated in business in the same house, with what might be left of the said stock of goods after sufficient thereof had been sold to pay and satisfy their claims.

There is neither averment nor claim that the indebtedness of Rich to May and Hirsch, for the payment of which the said stock of goods was mortgaged and sold, as aforesaid, did not in fact exist, nor that it had not been contracted in good faith, indeed, under circumstances that stamped it an obligation of honor as well as in law, nor that it did not remain unpaid until such sale; nor that the sale thereof was not properly and prudently conducted, and made under, pursuant to, and by virtue of, the power conferred in and by the said chattel mortgage, for the best price the goods could be made to bring in cash. Indeed, it is stipulated and agreed "that the said conveyance from the said Rich to the said May and Hirsch, of date of March 24, 1887, correctly sets forth the amount at that time owing to the said May and Hirsch by the said Rich."

Record, pp. 121, 124, 244, 245, 1–6; fols. 1–11, 189-194, 349, 350.

But it is alleged that this stock of goods constituted all of the property at the time owned or possessed by the said Rich, and that, therefore, inasmuch as he was then unable to pay all of his creditors in full, it became, and was his duty to have made a general assignment, under the statute above quoted, for the equal benefit of all of his creditors, instead of a disposition preferring a portion; and that the conveyance effected by the chat-

tel mortgage for the exclusive security and benefit of the defendants, May and Hirsch, constituted, in equity, and in legal contemplation, such general assignment for the equal benefit of all of the creditors of the defendant, Samuel Rich.

Record, pp. 1–6; fols. 1–11.

These averments, though as is submitted, containing and asserting no available equity, and constituting no ground for the relief sought, and no cause of action, were put at issue by the defendants, May and Hirsch, by a substantial admission and averment of the indebtedness of said Rich to them; the possession and ownership of the said stock of goods by Rich; the making of the chattel mortgage to secure the payment of said indebtedness: the taking possession of and selling the stock of goods by virtue of the power contained in the chattel mortgage to pay the same, and a denial of any counsel, advice, inducement or agreement, to the effect that Rich should endeavor to buy a large, or any quantity of goods, on credit, to enable the mortgage to be made upon such purchases, whereby the creditors from whom such purchases had been made would be deprived of the power to collect and obtain their pay therefor; and by further denial that the property mortgaged constituted all of the property at the time owned by the said Rich, and by a substantial admission of the indebtedness of Rich to other creditors, as alleged, by reason of failure to deny it.

Record, pp. 7–13, fols. 12–27.

The evidence established less than these averments assert, in this, to wit: That the said May and Hirsch advised said Rich to endeavor to buy a

large quantity of goods on credit, and, failing to pay for them, compromise with his creditors, is sworn to by Rich (Record, pp. 245–261, fols. 351–373) and denied by May and Hirsch (Record, pp. 90–109–120, fols. 143–170–187), as well as by a total absence of all motive to thus act.

This fact, thus affected by the testimony, seemingly wholly immaterial and quite impertinent to the purpose of the bill of complaint, is the only contested question in the case as made by the evidence. The making of the chattel mortgage, the indebtedness recited in it, the sale of the goods for its payment, the indebtedness of Rich to other creditors, and his inability to pay all of his debts in full, are all facts, either admitted or established without and beyond controversy.

It is true that, as to whether or not the mortgage constituted a disposition of all, or substantially all, of the property of Rich, was contested, and a reference made to enable the parties to take the evidence pro and con upon this question, which opportunity was embraced by them and much testimony taken (Record, pp. 202–243, fols. 280–347); but, though, as is thought, it might be fairly contended that the negative of this proposition was thereby established, especially when the equity of redemption of the stock of goods is considered, it is not believed that this element can have any very considerable controlling influence in the disposition of the case, and it is not understood how it can well be reached for consideration.

It is also true, that much evidence was taken upon the value of the stock of goods mortgaged, and sold under the power contained in the mort-

gage, but, as is conceived, if the mortgage was valid as a mortgage, and the property conveyed by it legally sold pursuant to the power contained in it, the retail value of that property would be so absolutely immaterial that it also will not be extensively noticed.

The various hearings in the case, including the final one, resulted in the decree from which this appeal is taken, to the effect, that the said chattel mortgage conveyed substantially all of the property at the time owned by the defendant, Samuel Rich, who was then insolvent, to secure the payment of the said indebtedness owing by him to the said defendants, David May and Adolph Hirsch; and that such a disposition of substantially his entire property to these creditors in preference to his other creditors amounted to a general assignment for the equal benefit of all of his creditors, including said May and Hirsch; that such of said creditors as were not then made parties to the proceeding, should be notified thereof, and might come in and prove their claims, and that the proceeds of the said sale of the said goods should be accounted for by the said May and Hirsch, as assignees thereof, and applied, not to the payment of their debt secured by the said chattel mortgage, but to the payment of all of the creditors of the said defendant, Samuel Rich, *pro rata*.

Record, pp. 243, 244, 285, 286, 377, 378, fols., 347, 348, 413, 414, 561 and 563.

Errors Assigned.

The appellants contend that the record shows that the Court below erred in rendering a decree,

"that the chattel mortgage mentioned in the defendants' (appellants') answer herein, given by the said Rich to the said May and Hirsch, on March 24, 1887, is, in legal effect, an assignment for the benefit of the creditors of the defendant, Rich; that the defendants, May and Hirsch, took the property conveyed by said mortgage as the assignees or trustees of the said defendant Rich, and as such assignees or trustees of the said Rich, shall account to the said creditors for the value of said property as determined and found by the said Master in Chancery.

That it also erred in overruling the exceptions and each of them filed to the Master's report, under the interlocutory decree, and found at fols. 544–555 of the printed record.

That it also especially erred in overruling the sixth exception to said report (fol. 552–5).

ARGUMENT.

This decree, as well as the case in which it was made, from its inception to its close, was based upon the construction which had theretofore been given to the assignment statute of the State of Missouri, quite unlike the one under consideration, by the Circuit Court of the United States, which was supposed to be controlling and binding, in the following cases, to wit:

Martin vs. Hausman, 14th Federal Rep., 160, 166.

Dahlman vs. Jacobs, 16th Federal Rep., 614.

Kellog vs. Richardson, 19th Federal Rep., 70.

Clapp vs. Dittman, 21st, Federal Rep., 15.
Perry vs. Corby, 21st Federal Rep., 737.
Kerbs vs. Ewing, 22 Fed. Rep., 693.
Freund vs. Yaegerman, 26 Fed. Rep., 812; 27 Fed. Rep., 248.
State vs. Morse, 27 Fed. Rep., 261.
Weil vs. Polack, 30 Fed. Rep., 813.

as will be readily seen from the opinion of the learned District Judge, who heard the case, in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss.
DISTRICT OF COLORADO, }

DANIEL K. TENNEY, *et al.*,
Complainants.
vs.
SAMUEL RICH, *et al.*,
Defendants.
AND
MAURICE L. LEOPOLD, *et al.*,
Complainants.
vs.
SAMUEL RICH, *et al.*,
Defendants.

In the Circuit Court of the United States within and for the District of Colorado.

OPINION OF JUDGE HALLETT.

HALLETT, Justice (orally):

There are two creditors' bills against Samuel Rich, David May and Adolph Hirsch, the object of which is to set aside a chattel mortgage made by Rich to Hirsch and May, which it is charged was fraudulent as to creditors.

One of these bills is filed by Daniel K. Tenney and the other by three persons named Leopold.

Mr. Tenney holds the demands of several merchants for goods sold to the defendant, Rich, and also some demands which were held by other persons against the same party for money loaned. The Leopold indebtedness was for goods sold by the plaintiffs to the defendant, Rich. Both these parties complainant obtained judgment against Rich for the amount due upon the several demands, and these bills were filed after execution was issued upon the judgments and returned unsatisfied.

It is claimed and charged in the bills that Rich was in failing circumstances during the year 1886 and the early part of 1887; that by the advice and approval of the other defendants, May and Hirsch, he proceeded to eastern cities and purchased a large amount of goods under false representations as to his solvency and responsibility, and bought these goods out to his store in Leadville. That the scheme between himself and May and Hirsch, was that these goods should be turned over to May and Hirsch, in sufficient quantity to pay them for some indebtedness due to them for some liabilities they had incurred to a bank in Leadville, on his account; then an assignment should be made by Rich, and when affairs should be brought to a proper point, a settlement of the indebtedness of Rich should be obtained upon the best terms obtainable, probably about 25 cents on the dollar, with the Eastern creditors. In this way May and Hirsch to be paid in full whatever was due to them and in respect to any debts of Rich that they had assumed at the bank. The Eastern creditors, especially those from whom the purchases were made in the early part of the year 1887, would get but a small part of what was due them.

Rich was unable to purchase as much as was intended. It was expected he would get goods of the value of thirty or thirty-five thousand dollars, but he did in fact only get about $16,000 worth, which were brought to Leadville, and put into the general stock of goods held by him there. Upon the return of Rich from the East, which was about

the time that the recent purchases were arriving also, he gave a chattel mortgage to May and Hirsch, securing them for the indebtedness due to them, and for the paper which they had endorsed to the bank. The whole amount of this indebtednesss, including the paper on which May and Hirsch were liable to the bank, was about $18,400.

May and Hirsch, getting possession of the goods in this way, shortly afterwards sold them in bulk for much less than their value, and the circumstances of the sale were fraudulent as to creditors.

It is also averred, I believe, that there was an understanding different from that which had previously existed between Rich and May and Hirsch at the time that the chattel mortgage was made by Rich to May and Hirsch; that this should be only a formal and collusive proceeding; that as soon as terms could be made with Eastern creditors, Rich should be allowed to resume control of the store, and continue business therein.

As to the matters alleged in respect to the purchase of the goods in the east, the false representations as to Rich's ability, and his intention to pay for them, upon these bills, it is to be remarked that nothing can be claimed by complainants independently of what follows: The circumstances, if they are regarded as established by the evidence, may be taken to give color to the subsequent conveyance by chattel mortgage from Rich to May and Hirsch, but standing alone as a fraudulent purchase by Rich of goods from eastern merchants upon false representations, the remedy of the parties defrauded is only by rescinding the sale and proceeding for the value of the goods or the goods themselves. That course was pursued by another creditor who brought an action at law, and recovered judgment in this Court. These parties, in so far as their demands are for goods purchased by Rich, during the month of February, 1887, have affirmed those sales by bringing an action for the price of the goods. This, I believe, is a proposition that is recognized in all the books in which it is con-

sidered. It is said in Benjamin on Sales, page 366, Section 433, that, by suing for the value of the goods, the sale, which was, prior to that time, voidable for the fraud committed upon the seller, may be regarded as confirmed.

As I stated before, I suppose there is no question as to that proposition. In so far as the averments of these bills, and the demands themselves rest upon the purchase of goods shortly before the making of the chattel mortgage, it may be said that these creditors are not in a position to claim anything in respect to the fraud committed upon them in purchasing the goods.

The averment that there was an agreement and understanding at the time that the chattel mortgage was made by Rich to May & Hirsch, that Rich should resume possession of the store, is left much in doubt by the testimony. Rich testifies to it, and one or two other witnesses mention circumstances which may be regarded as corroborating his testimony to some extent, but this is stoutly denied by the defendants in the suit; and whatever may have been said by the defendants, May & Hirsch, to Rich, at the time this mortgage was given, to induce Rich to give it to them, the position of the defendants, May & Hirsch, at that time, was such that we may readily assume that their only object was to obtain payment of the demands due them, or security for such demands. It is quite possible that some statements or declarations may have been made by May & Hirsch to Rich at that time as to what they would do for him thereafter to induce him to make this transfer to them, and altogether probable that the parties making them had no intention to carry out and perform their promises, whatever they were, and had only the object and purpose in view of securing the amount due them and those for which they were liable to the bank. If it was only a deceit, a wrong practiced upon Rich, rather than a scheme recognized by both parties to the transaction to defraud other creditors it would not be a matter

of which other creditors could avail to share in the proceeds of the property.

Of course I recognize the law that if parties agree among themselves in a scheme to defraud third parties, creditors of one of them, that anything that may take place, any agreement that may be made in pursuance to that scheme may be void as to the creditors, on the ground of fraud against them; but if, on the other hand, the parties practicing such deceit, or charged with the practice of such deceit, only intended to secure themselves in respect to demands which they hold against the debtor, and what they do is in the way of falsehood and deception towards the debtor to induce him to act; to make the transfer to comply with the wishes of the persons so receiving and misleading him, it does not avail third parties as a means of recovery against the parties first named, or the debtor.

Upon all the evidence it cannot be clear—at least it is not clear to my mind that there was any such agreement between Rich and May and Hirsch, accepted and concurred in by May and Hirsch, at the time of this transfer as is alleged in the bill of complaint.

Furthermore, if it be taken as established, that there was such an agreement and understanding the statute in relation to assignments in this State has left the matter in some doubt as to the effect of it.

In the third section of this act of 1885, it is declared that: "No such deed of general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid, unless by its terms it be made for the benefit of all his creditors, in proportion to the amount of their respective claims." And in the eighteenth sec.: "No assignment shall be invalid because of misappropriation of the property of the debtor, by him prior to the assignment, but the assignee may recover such property, if so misappropriated in fraud of this act. But nothing in this act contained shall invalidate any conveyance or

mortgage of property, real or personal, by the debtor before the assignment, made in good faith, for a valid and valuable consideration."

Whether under an act containing provisions of this kind a debtor assigning property for the purpose of paying certain creditors, whatever the form of the instrument may be, if it appear distinctly that in some features of it the assignment is colorable and fraudulent,—in other words, in the language of this act that there has been a misappropriation of property by the debtor,—whether it can be avoided altogether for the misconduct of the debtor in that respect is not altogether clear; so that, with reference to that matter, if it were clearly proven that this conveyance was made with a view to defeat the provisions of the assignment act, and to defeat the creditors of Rich, other than May and Hirsch, it would be something of a question whether the conveyance could be set aside, to the extent and in the manner demanded by complainants.

There is another view of the matter, which was not much discussed, or perhaps not discussed at all, in the argument of these cases at the bar, and that is whether this paper, if it covered all of the property of Rich, is not to be taken as an assignment subject to the provisions of the act of 1885, whatever its form may be, and upon that point I have arrived at the conclusion that if it is an assignment of all the property, or a conveyance of all of it, for the payment of these creditors, operating thus as a preference of these creditors contrary to the terms of the act, that it may be regarded as of that character.

Whether it covers all of the property of the defendant Rich, is not very clear upon the evidence. It seems to have been assumed by the counsel, in taking testimony in the case, that such was the fact. Expressions drop from the witnesses occasionally which lead to that conclusion—that all of the property was embraced in the chattel mortgage. It was averred in the bill that all of the property was put into the chattel mortgage,

and denied in the answer. The question was not asked directly of any witness put upon the stand, either on the part of complainants or of defendants. Counsel seemed to have ignored that as a question in the case; and from the expressions to which I have referred, used occasionally by the witnesses, to the effect that Rich had nothing left or that his wife was impoverished by this transaction—something like that—it may perhaps be inferred that the fact is that there was no other property than that which was covered by this chattel mortgage.

Assuming that the fact is so, and that all of the property was covered by the chattel mortgage, whether this, although in the form of a mortgage, shall be taken to be an assignment under the act, is a question which has received some consideration in the State of Missouri and in the Federal Courts of that District, under a statute not quite as strong as ours—that is, the statute of that State does not forbid preferences, I believe.

It has been held by the Circuit Court of that District, with some dissent on the part of Judge Brewer, since he came to the bench, that, whatever the form of the instrument, if its effect is to convey all the property of the debtor, and give to the grantee a preference over other creditors, it shall be taken to be an assignment under the general act of that State, and subject to its provisions. The first case was decided by Judge Krekel, with the concurrence of Judge McCrary—Martin vs. Howson, 4 or 14 Fed. Rep., 60 or 160. Afterwards, in Clapp vs. Dittman, 21 Fed. Rep., 15, and Perry vs. Corby, 21 Fed. Rep., 737, this ruling was affirmed by Mr. Justice Miller, or, I think, by Judge Treat, with the concurrence of Justice Miller. Other cases bearing upon the same point, and in which the rule, as stated in the first decision, is recognized, and in some of them affirmed, as I have stated, with some expressions of doubt by Judge Brewer, are:

Kerbs vs. Ewing, 22 Fed. Rep., 693.
Clapp vs. Nordweyer, 25 Fed. Rep., 71.

Freund vs. Zargerman, 26 Fed. Rep., 812.
Freund vs. Zargerman, 27 Fed. Rep., 248.
State vs. Morse, 27 Fed. Rep., 261.
Weil vs. Polack, 30 Fed. Rep., 813.

In harmony with these decisions is the opinion given by Judge McCrary, in this Court, in the case of Doggett, Bassett, Hills & Co. vs. Herman Brothers, 5 McCrary, 269.

In several States this rule is not recognized, the Courts in those States going upon the ground that the intention of the parties shall control, with a disposition on the part of the Courts to support the instrument in the form in which it is made whatever its effect may be.

Cases of this character, are—

Cadwell's Bank vs. Crittenden, 66th Iowa, 237;
Carson vs. Byers, 67th Iowa, 606;
Aulman vs. Aulman, 71st Iowa, 124;
Waterman vs. Silberberg, 67th Texas, 100.

The rule, as announced in Missouri, appears to be the rule for this circuit, and I can say that I concur in it entirely, not sharing the doubts expressed by Judge Brewer. I think this chattel mortgage, if in fact it covers substantially all of the property of Rich, is to be taken as an assignment under the act of 1885; and the property conveyed by it is to be distributed pursuant to that act without regard to the circumstances, fraudulent or otherwise, attending the making of that instrument.

This view is not at all in conflict with the case of Campbell vs. The Colorado Coal and Iron Company, decided by the Supreme Court of this State, and reported in 9th Colorado, at p. 60. In that case it was held by the Supreme Court of this State that a partial assignment of the property of a debtor for the purpose of paying in full a creditor was not opposed to the act of 1881, in relation to assignments, which forbade preferences in any instrument of that character.

Assuming that the same rule is applicable to the act of 1885, and I see no distinction that can

be raised upon the terms of the latter act, the decision of the Supreme Court of this State, that a partial assignment by a debtor in payment of debts due the assignee, is not in fraud of the act of 1881, does not approach the case of an assignment of all of the property of a debtor to the exclusion of creditors not mentioned in the instrument. Upon this general expression of opinion in relation to these issues, I am inclined to refer this case to a Master to take proofs; if the parties shall regard that as a question to be contested whether the chattel mortgage covered all the property of Rich at the time it was made. If that becomes a question of controversy, it will of course, be referred to the Court for consideration after the testimony is taken.

If it is not controverted, then the master will proceed to ascertain the several demands of these creditors, the demands of May and Hirsch, as well as of these complainants, and of any other creditors who may seek to become parties to this proceeding, and make some estimate of the value of the property conveyed by the chattel mortgage.

Upon the circumstances attending the mortgage, and the fact that the parties were seeking to avoid the force and effect of the assignment act, I suppose the defendants are to be charged with the full value of the property without reference to what may have been obtained for it upon sale, or the expenses of disposing of it; and the accounting should proceed upon that hypothesis, having reference to all the demands against the property, including those of the defendants, May and Hirsch, and upon the basis of the full value of the property, at the time that they received it. The property is to be distributed *pro rata* amongst the creditors of Rich, at the time of the transfer."

Much reliance was also placed upon the decision of this Court in the case of White vs. Cotzhausen, 129 U. S., 329, 9 Sup. Ct. Rep., 309, then recently made applying to a statute of the State of

Illinois the construction given to it by the Supreme Court of that State.

The statute of Missouri construed by the decisions of the Circuit Court of the United States above cited, is as follows:

"Every voluntary assignment of lands, tenements, goods, chattels, effects and credits made by a debtor to any person in trust for his creditors, shall be for the benefit of all the creditors of the assignor, in proportion to their respective claims."

General St. 1865, ch. 112, *1; 1 Wag. St. (3rd Ed.), 150.

Had it been provided by this statute of Missouri, as it is by the statute of Colorado, above quoted, that no general assignment for the benefit of creditors "shall be valid, *unless by its terms* it be made for the benefit of all * * * creditors, in proportion to the amount of their respective claims;" "but nothing in this act contained shall invalidate any conveyance or *mortgage* of property, real or *personal*, by the debtor before the assignment, made in good faith, for a valid and valuable consideration," doubtless the Circuit Court decisions above cited would never have been made, or if made, would have announced a doctrine quite the reverse of what they now do. However this may be, this Court has reviewed and overruled them, as applied to the above quoted statute of Missouri, for the reason that its own Supreme Court had construed it differently, and as permitting preference among creditors by a failing debtor.

Union National Bank vs. Bank of Kansas City, 136 U. S., 223.

Same case 10 Supreme Court Rep., 1013.
Same case reviewed, 31 Central Law Journal, 261 et seq.

And in the same opinion the case of White vs. Cotzhausen, *supra*, upon which much reliance was placed by the trial Court in this case, as was before stated, was explained as resting for its support on a reverse interpretation of a similar statute by the Supreme Court of the State which enacted the statute: It being said by this Court in that case, upon this subject, as follows:

"The decision in White vs. Cotzhausen, 129 U. S. 329, 9th Supt. Ct. Rep. 309, construing a similar statute of Illinois, in accordance with the decisions of the Supreme Court of that State, as understood by this Court, has, therefore, no bearing upon the case at bar.

The fact that similar statutes are allowed different effects in different States is immaterial. As observed by Mr. Justice Field, speaking for this Court: "The interpretations within the jurisdiction of one State becomes a part of the law of that State, as much as if incorporated into the body of it by the Legislature. If, therefore, different, interpretations are given in different States to a similar local law, that law, in effect, becomes by the interpretations, so far as it is a rule for our action, a different law in one State from what it is in the other."

Union National Bank vs. Bank of Kansas City, *supra*.
Christy vs. Pridgeon, 4 Wallace, 196, 203.
City of Detroit vs. Osborne, 31 Central Law Journal, 1012.

And it is further held by this Court, in the case of The Union National Bank vs. Bank of Kansas City, *supra*, that:

"The question of the construction and effect of a statute of a State regulating assignments for the benefit of creditors is a question upon which the decisions of the highest Court of the State, establishing a rule of property, are of controlling authority in the Courts of the United States."

Brashaer vs. West, 7 Peters, 608, 615.
Allen vs. Massey, 17 Wallace, 351.
Lloyd vs. Fulton, 91 U. S., 479, 485.
Sumner vs. Hicks, 2 Black, 532, 534.
Jaffray vs. McGehee, 107 U. S., 361, 365.
Peters vs. Bain, 133 U. S., 670, 686.

Applying these principles to the case under consideration, it is submitted that little difficulty should be experienced in determining the error of the trial Court.

The Supreme Court of the State of Colorado had, prior to the hearing in this case, in construing an assignment statute of the State, far more unfriendly to preferences than the one under consideration, and in the words following, to-wit:

"Whenever any person or corporation shall hereafter make an assignment of his or its estate for the benefit of creditors, the assignee named in the deed of assignment, appointed or selected, shall be required to pay in full, from the proceeds of the estate, all moneys *bona fide* due to the servants, laborers and employee of such assignors for their wages accruing during the six months next preceding the date of such assignment, but to exceed, in no event, the sum of $50 to any one person then remaining unpaid.

"All the residue of the proceeds of such estate shall be distributed ratably among all other creditors, and any preference of one creditor over another, except as above allowed, shall be entirely null and void, anything in the deed of assignment to the contrary notwithstanding."

Section 68, General Statutes of 1883, of Colorado; unqualifiedly held, that preferences among creditors by a failing debtor were not prohibited unless made in and by a deed of general assignment for the benefit of all the creditors of such assignor.

Campbell vs. Colorado C. and I. Co., 9 Colo. 60.

It is said by Mr. Justice Helm, who delivered the opinion of the Court in the case last above cited, as follows:

"A fundamental principle underlying this subject is that, so long as the debtor retains dominion over his property, in the absence of statute and fraud, he may do with it as he pleases. He may transfer the whole of his estate in payment or in security of a single *bona fide* debt. He may assign, mortgage or otherwise incumber his estate, or a part thereof, in favor of some of his creditors, excluding the rest; or he may make an assignment for the benefit of all his creditors, and therein give preferences to a selected few. It is only when, either by a general assignment or otherwise, the debtor has parted with the dominion over his property, that, in the absence of statute or fraud, the foregoing privilege is forfeited.

Burrill on Assignments, (3 ed.), No. 160, 161, and cases.

Lampson vs. Arnold, 19 Iowa, 479, and cases cited.

Worman vs. Wolfersberger's Ex'rs, 19 Pa. St., 59.

2 Kent's Commentaries (12 ed.), 532, and cases cited,

as to assignments. While, at first, this common law doctrine may seem somewhat inequitable, yet, upon reflection, it clearly appears to be supported by at least one consideration of the most weighty import. To hold that debtors may not give preferences among their *bona fide* creditors, so long as

they control their property, would greatly embarrass the transaction of nearly all kinds of business. Some of the authorities go so far as to say that such a rule would prevent the carrying on of business altogether.

"Whilst a man retains dominion of his property, he may incumber and convey it as he pleases, if not directly forbidden by law, and prefer such creditors, by payment or transfer, as he chooses; *and if* it were not so, an individual could not get along in his business."

Blakey's Appeal, 7 Barr, 449.

"If, while a man retains his property in his own hands, the right of giving preferences should be denied, he would so far lose the dominion over his own that he could not pay *anybody*, because whoever he paid would receive a preference."

Tillou vs. Britton, 9 N. J. Law, 120.

*** The general rule is that statutes in derogation of the common law are to be strictly construed. Certainly a proper regard for this rule forbids the enlargement of a statute by construction, so as to include common law principles not clearly within its language or spirit. In so far as the section before us prohibits preferences in general assignments, it unquestionably modifies and restricts the common law; but if the legislature had intended to further change the common law, and deny preferences through *partial* assignments, it should have said so, as like bodies elsewhere have done, in unequivocal language. The Court should not have been left to infer this meaning from the expression used."

Campbell vs. Colorado C. and I. Co., 9 Colo., 64-66.

And see Bank vs. Sprague, 3 C. E. Green. 13.

The distinction which the learned District Judge, who heard this case, attempts to draw between the case of Campbell vs. Colorado C. and I. Co., *supra*, is not very apparent. It lacks the equity of redemption in and to the stock of goods

mortgaged, the other property possessed at the time by Rich, the absence of an express provision in the chattel mortgage, that it was made for the equal benefit of all of the creditors of Rich, and the absence of a provision in the statute, that mortgages to secure preferred creditors shall not be within its operation, or having any basis for its support.

The Supreme Court of Colorado has in other cases recognized the soundness of the decision in Campbell vs. Colo. Coal Co., and the new Court of Appeals, in the first case decided by it, practically applied its doctrines to a construction of the Act of 1885, which seems to have been regarded by his honor Judge Hallett as possibly differing from the provisions of the Act of 1881.

"The assignment of a fund by an insolvent debtor to one of his creditors, made for the benefit of the assignee and a certain other creditor, is not invalidated by the subsequent act of the latter creditor in transferring his claim for collection and without consideration to the assignee or by the acts of the favored creditors in agreeing upon a ratable distribution of the fund between them, it not being sufficient to pay their claims in full."

Marks vs. Anderson, 1 Colo. App., 1.

Bailey vs. Johnson, 9 Colo., 371.

The Circuit Court, by construing the mortgage to May and Hirsch to be an assignment for the general benefit of the creditors of Rich, and charging May and Hirsch with all the responsibilities and duties of assignees under the act of 1885, has completely overturned the provisions of Section 3 of that act. The law referred to was enacted subse-

quently to the decision of Judge McCrary in Herman's case, and evidently for the purpose of remedying the insufficiencies of the act of 1881. The substance of Judge McCrary's decision is, that a transfer of property by an insolvent to a creditor, before an assignment for the benefit of all creditors, but made so nearly at the same time as to amount to a part of the same transaction, is void; and this irrespective of the good faith of the assignee. If the preference indicated by the first transfer were so far removed, in point of time, from the general assignment as to be separate from and independent of it, Judge McCrary's views and those of the Supreme Court of Colorado, in the Campbell case, would doubtless have been identical. As it is, there is no substantial difference between them. But the General Assembly of 1885 determined to regulate the subject of assignment by statute, and the act of that year was the fruit of such determination. Accordingly, it enacted, *inter alia*, that "*No such deed* of general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, *shall be valid, unless by its terms it be made for the benefit of all his creditors*, in proportion to the amount of their respective claims."

Under this provision, the mortgage to May and Hirsch, whatever else it may be, certainly is not an assignment for the benefit of creditors. It is not either, in terms or otherwise, made for the benefit of all the creditors, or any of them, save the two to whom it was given. By necessary implications, all other creditors are excluded from its operation. The appellees clearly perceived this,

for in their bill of complaint they allege, not that the mortgage was an assignment for the benefit of *all* the creditors, but "for the benefit of creditors, giving preference to the claims of the mortgagees, and that the same *being preferential, is void* as to your orator and all others of the creditors of Samuel Rich." (Printed Record, fol. 10, pp. 5 and 6). His Honor, the trial Judge, refers, in his opinion, to the fact that this question was not discussed by counsel in the argument, and reaches his decision, through his own course of reasoning, unaided by them. The section just quoted is formulated in the stongest phraseology. Words are used whose prohibitory character has been again and again recognized by the courts. They cannot be considered as permissive or advisory, but prohibitive and mandatory. To hold in the face of such a statute that a document, containing none of the essential requisites of a valid assignment, is an assignment nevertheless, is virtually to hold that the General Assembly was playing with words when the law was drafted, and that the most solemnly expressed purpose of contracting parties means directly the reverse of what they intended.

Section 18 is equally clear and emphatic in recognizing the validity of conveyance or mortgages of property by the insolvent before assignment if made in good faith for a valid and valuable consideration. His Honor, the trial judge, has clearly defined the character of the fraud which invalidates such a transaction, and the confirmation of the alleged acts of fraud by the institution of this suit on the part of those who were entitled originally to avail themselves of its existence, if

any has been proven. If our Statute, beyond making provisions for the details of assignments, contained nothing save what appears in Section 1 concerning their nature and effect, the decisions construing the Missouri law, might be applicable; but even then, according to the recent authorities of that State, the May and Hirsch mortgage, would not be regarded as an assignment for the benefit of all creditors, but valid nevertheless.

Holt vs. Simmons, 16 Mo. App., 97.
Sampson vs. Shaw, 19 Mo. App., 274.
Smith vs. Sherman, 29 Mo. App., 186.
Hargadine vs. Henderson, 97 Mo., 375.

In the latter case, the Supreme Court of Missouri, after declaring the assignment law of that State not to be, in letter or spirit, a bankrupt or insolvent debtors act, and recognizing the right of a debtor, whether solvent or insolvent, to sell or mortgage the whole or any part of his estate for the benefit of one or more of his creditors, to the exclusion of the others, notwithstanding the resultant hindrance or delay, declares that the terms of that law "in no way qualify the rule by which the character of the instrument is to be determined." Yet the Court below virtually used the assignment law of Colorado as the rule or standard by which to measure or construe the mortgage of the appellants. I submit that, if it can be so used, it can be made a rule of construction to be invoked in all instances when a debtor, solvent or insolvent, sees fit to make some disposition of a part or all of his estate to pay or secure one or more of his creditors, or to raise money from third persons to

be utilized in the liquidation of his liabilities. This cannot be the law.

Not even can the rule of necessity be invoked in its defense, for ample remedies were at the command of the appellees. If the mortgage was fraudulent as to them, they could have attached the property covered by it, and defeated the lien claimed under it by the appellants. If it covered goods bought under false pretenses and by lying representations as to solvency, the title to them remained in the vendors, who by the action of replevin were able to secure their own. Or if the mortgage being valid in the beginning, the mortgagees were indisposed to act fairly and honorably, the other creditors had the right by paying off the mortgage claim to be substituted to all the rights of the mortgagees thereunder. Or if the mortgage being valid in the beginning, the sale of the property thereunder was fraudulent, or not being fraudulent the goods were nevertheless sacrificed or far less than their value, they could as judgment creditors of the mortgagor have compelled an accounting for such value.

The sixth exception to the Master's report finds the value of the property covered by the mortgage and sold for $20,100, to be $33,500; and the decree requires that the mortgagees shall account to creditors not for what they realized at the sale, but for what the goods were supposed by other parties to have been worth.

A discussion of this error is only pertinent in the event the Court should decide against the appellants on the main question. In such event I respectfully submit that the record does not sup-

port the finding of the Master on this proposition. The property was advertised for ten days in all the Leadville daily papers. That is the statutory period for advertisements of personal property under execution.

Mills' Annotated Statutes, Sec. 2258.

The sale was publicly and fairly conducted. Resort was had both to public and private sale, and ultimately the goods were sold in entirety to one purchaser. If appellees had then been half as anxious to have them bring more than that sum as they now are to have a mortgage which they alleged to be void, decreed to be valid, and for their benefit, they could easily have attended the sale and bid against the purchaser, Shoenberg. It is common experience that property at auction does not bring such prices as are commanded by private sale, and it is equally within our general knowledge that a stock of furnishing goods deteriorates in value in proportion as it ages. Hence, we have a right to assume that the testimony of appellants' witnesses on this subject is correct, and a sale under a power contained in a mortgage, if fairly made, should not be disturbed because the full value of the property may not, in the opinion of others, have been realized.

Jones on Chattel Mortgages, 801, and cases cited.

It is respectfully submitted that the decree is erroneous and should be set aside.

C. S. THOMAS,
Solicitor for Appellants.

99

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1892.

DAVID MAY AND ADOLPH HIRSCH,
APPELLANTS,

vs.

DANIEL K. TENNEY, TRUSTEE,
APPELLEE.

On Appeal from the Circuit Court of the United States, for the District of Colorado.

BRIEF FOR APPELLEE.

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Solicitor pro se.

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STATEMENT.

This appeal is taken from a decree of the Circuit Court, adjudging that a certain instrument, by which Samuel Rich, an insolvent clothing merchant of Leadville, transferred and conveyed all his stock in trade to the appellants, May and Hirsch, with authority to take immediate possession of the property, sell the same, and apply the proceeds to the payment of certain designated debts, was in legal effect a general assignment for the benefit of Rich's creditors, and requiring appellants, who had taken and sold the property, to *pro rata* its value with the com-

plainant and other creditors who had come in and proved their claims.

The instrument in question will be found in the printed record at page 121. At the same time that the bill in this cause was filed, another similar bill was filed on behalf of Morris Leopold *et al.*, against the same defendants. During the progress of the two causes they were practically consolidated and tried together, as will be seen by various documents in the record. The final decree, however, is entitled in the cause wherein Tenney is complainant, and the Leopold claim is embraced in that decree, so that we need not further notice the Leopold bill.

The appellee, Tenney, having, as trustee for several of Rich's creditors, obtained a judgment at law against Rich in the Circuit Court, April 25, 1887, for the sum of $13,665, and an execution thereon having been returned unsatisfied, filed this bill May 6, 1887, against Rich and the appellants.

The bill alleges, and the evidence in support thereof strongly tends to show, though the answer of May and Hirsch and their testimony in support thereof denies, that the instrument in question, called in the record a chattel mortgage, was obtained from Rich as the result of a conspiracy, initiated by May and Hirsch for their own benefit, for the purpose of fraudulently acquiring a large amount of property at a very low cost, and that Rich participated in that branch of the conspiracy which had for its object the purchase on credit of a large amount of goods to be immediately turned over to May and Hirsch, and in pursuance thereof did purchase on credit goods to the amount of some $16,000, which were, in fact, included in the transfer to appellants.

The evidence in support of the bill, however, tends to show that appellants, having obtained posessesion of the property, failed to keep their promise to use that advantage as a means of procuring for Rich a settlement with his creditors, but sold the stock for $20,100, and left him utterly despoiled.

The bill alleges that this transfer of Rich's property was in law an assignment for the benefit of creditors, giving preferences to appellants, and was therefore void as to complainant and all other creditors of Rich, and prays a decree declaring it fraudulent and void, and requiring appellants to pay into court for complainant's benefit the true value of the property, which is alleged to be $48,000.

The answer of May and Hirsch, denying the alleged fraudulent agreement and all charges of fraud in the bill, sets up as the sole inducement to the instrument in question, that Rich was indebted to the bank in the sum of about $18,400 and interest; that appellants "became "legally liable by indorsement, suretyship and otherwise, "for the whole amount of said indebtedness;" that the bank was threatening to commence suit against them for that amount, and that to avoid the threatened suit and to protect themselves from loss by reason of that liability, they made an agreement with Rich and the bank whereby the appellants were to pay said indebtedness to the bank in full, and Rich should execute to them a chattel mortgage upon his stock, by the terms of which they should be placed in possession of the goods, should sell the same at public or private sale as they might deem best, and apply the proceeds thereof, first, to the discharge of said indebtedness so as aforesaid paid by them, and turn over and deliver the residue to Rich.

We shall have occasion hereafter to notice the evidence in support of the closing averment of this paragraph of the answer, viz.: "that these defendants thereupon paid said indebtedness in full." (*Record, p. 13.*)

The answer then avers that in pursuance of that agreement the instrument in question was executed, setting out its terms.

The cause having been heard before the Hon. Moses Hallett, district judge, January 6, 1888, on the pleadings and proofs theretofore taken, the court, after advisement, came to the conclusion that if the instrument in question covered substantially all of the property of the defendant, Rich, it must be regarded as in legal effect, an assignment under the act of 1885, and that, in that event, the property conveyed—or its value as ascertained and recovered by the court—should be distributed pursuant to that act without regard to the circumstances, fraudulent or otherwise, attending the making of that instrument.

The opinion of the court announcing this conclusion was delivered orally, and, though taken down by a reporter at the time, is not found in the printed record, and probably was not filed. We have, however, appended to our brief, copies of this and two other oral opinions subsequently delivered in the case by the presiding judge.

On March 21, 1888, an order was entered giving the parties an opportunity to take further evidence on the question as to whether the instrument in question covered all or substantially all the debtor's property. (*Record, p. 202.*)

This testimony having been taken, was reported to the court, and the cause again came on for hearing and was again fully discussed upon the main question, counsel for appellants making an earnest effort to induce the court to

recede from its former conclusion. The court, however, in an opinion delivered July 30, 1888 (hereto appended), adhered to its previous decision, held further that the proof was ample to show that May and Hirsch, at the time the deed was executed, were fully advised of Rich's condition, and fully aware that he could not go on with his business, and, after an analytical review of the terms of the instrument, concluded that it was "a sham evasion of the general form of an assignment."

Upon the question whether the conveyance embraced all of the debtor's property, the court held that it did, substantially, and on August 30, 1888, an interlocutory decree was entered, whereby the court found, in terms, "that the transfer of the property on the 24th day of "March, A. D. 1887, from the said Rich to the said May "and Hirsch was a general assignment by said Rich of all "or substantially all of his property, and that the creditors "of said Rich at the date of said transfer are entitled to "their *pro rata* share of the said property so transfered."

The matter was thereupon referred to the master to take proof of claims, and also to inquire and report concerning the value of the property transferred. (*Record, p. 243.*)

Subsequently the master made his report (*Record, p. 334, etc.*), finding the value of the property to have been $33,500; from this was deducted, by stipulation, the sum of $2,113, the amount of a judgment recovered against May and Hirsch by L. Lowenstein *et al.*, for the value of certain goods sued for in an action of replevin in that court, based on the claim that the goods had been purchased by Rich with the fraudulent intent to transfer them to May and Hirsch, and not to pay for them; the remainder, $31,387, was, by the report, divided and distributed

among the creditors who had proved their claims before him, including the appellants, May and Hirsch, whose claim consisted of a promissory note, dated April 4, 1887, for $18,400, with interest (*Record, p. 337*). The amount of this claim, it will be observed, was the same as that which appellants in their answer allege was the amount of Rich's indebtedness to the Carbonate Bank on March 24, 1887, (*Record, p. 13*).

The admission of some additional claims necessitated a re-distribution of the fund and a supplemental report (*Record, p. 373*), which was followed by exceptions on the part of appellants and a further hearing, mainly on two questions, viz:

1. As to whether creditors of the old firm of Nathan & Co., composed of Rich and Nathan, whose debts Rich had assumed on dissolution, were entitled to share in the distribution of the fund.

2. As to the method adopted by the master in ascertaining the value of the property.

On March 1, 1889, the court delivered its opinion (herewith appended) overruling the exceptions, and on March 2, 1889, the decree was entered from which this appeal is taken.

The following facts in the case are, we think, practically undisputed:

In the year 1886 the defendant, Samuel Rich, was engaged in business at Leadville, Colorado, as a dealer in clothing, gentlemen's furnishing goods, etc., having succeeded in that business the firm of Nathan & Company, composed of Ed. Nathan and himself, whose indebtedness he had assumed, including some of the claims allowed by the master.

Among the items of that indebtedness was a note for $7,000, dated Dec. 10, 1885, given to and held by the Carbonate Bank of Leadville, which remained unpaid at the time of the failure.

On July 14, 1886, defendant Hirsch, who was a prosperous wholesale liquor dealer at Leadville, and the brother-in-law of Rich, began to endorse for him at the bank, and continued to do so until shortly before the failure.

In December, 1886, David May, who was a wealthy clothing dealer of Leadville, also began to endorse Rich's paper at the bank.

In February, 1887, Rich went east to buy goods, and succeeded in purchasing on credit to the amount of $15,000 to $16,000, goods which were shipped to him and placed with his stock at Leadville. Rich's account of the arrangement with May and Hirsch under which he made these purchases, and of what took place on his return, is recorded in that portion of his testimony found on pages 245–260 of the printed record.

He returned from the east March 24, 1887. His total indebtedness at that time, so far as shown by claims proved before the master, was about $70,000; the value of the property transferred to May and Hirsch is found to have been $33,500.

On that very day May and Hirsch succeeded in inducing him to execute and deliver to them the instrument in question, which the court has found covered substantially all of Rich's property. He was then totally insolvent, and May and Hirsch knew it. Rich's account of this part of the transaction is recorded on pages 249–250. May and Hirsch took immediate possession of the store and stock, and after a sham attempt for two days to close out the business at retail, advertised the stock for sale and

sold it for $20,100 to one Joe Shoenberg, by whom it was shortly afterwards turned over to a newly organized corporation composed of Joseph Shoenberg, Louis Shoenberg and David May. (*Record, p. 108.*)

Other facts will perhaps be referred to in our discussion of the law of the case, for which, also, we reserve an analytical statement of the indebtedness covered by the instrument in question and of the various provisions of that instrument.

It may not be improper to state here that the present counsel for appellees did not participate in the trial of this cause, and that in his opinion the decree appealed from can be sustained on grounds somewhat different from those upon which the learned judge who presided at the trial seems to have based his decision; but that out of deference to the opinion of a jurist of such large experience and distinguished ability and in justice to him also, we have endeavored to present the case as it appeared to him, and have, for the same reason, printed with our brief the opinions delivered by him in the progress of the cause.

We would not be understood as doubting the soundness of the conclusions of the Circuit Court as to the character of the instrument in controversy. If our own views are correct, the Court merely looked further than was necessary for a reason for such conclusion.

The following is a copy of the instrument in question:

"EXHIBIT 2" (C. A. H.).

Know all men by these presents, that whereas Samuel Rich, of the City of Leadville, in the County of Lake and State of Colorado, and Nathan & Com-

pany, E. Nathan and Nat. Nathan, on the 10th day of December, 1885, executed their promissory note, whereby they promised to pay to the Carbonate Bank of Leadville, Colorado, the sum of seven thousand dollars ($7,000), on which said note there was paid Sept. 11th, A. D. 1886, the sum of five hundred dollars ($500), and on the 14th day of September, A. D. 1886, the sum of three hundred dollars ($300), and on which the interest was paid to November 11th, A. D. 1886, and which note the said Samuel Rich is bound to pay.

And whereas the said Samuel Rich, on the 14th day of July, A. D. 1886, executed his promissory note, whereby, sixty days after the date thereof, he promised to pay to the Carbonate Bank of Leadville, Colorado, the sum of one thousand dollars ($1,000), on which said note the interest has been paid to January 30th, A. D. 1887, and the payment of which said note is, for a valuable consideration, guaranteed by A. Hirsch.

And whereas the said Samuel Rich, on the second day of August, A. D. 1886, executed his promissory note whereby he promised, sixty days after the date thereof, to pay to the Carbonate Bank of Leadville, Colorado, the sum of fifteen hundred dollars ($1,500), on which said note the interest has been paid to January 30th, A. D. 1887, and the payment of which said note is, for a valuable consideration, guaranteed by the said A. Hirsch.

And whereas the said Samuel Rich, on the 2d day of August, A. D. 1886, executed his promissory note whereby he promised, ninety days after the date thereof, to pay to the Carbonate Bank of Leadville, Colorado, the sum of twenty-five hundred dollars ($2,500), on which said note the interest has been paid to January 30th,

A. D. 1887, and the payment of which said note is, for a valuable consideration, guaranteed by the said A. Hirsch.

And whereas, on the 7th day of December, A. D. 1886, the said Ed. Nathan and Nat. Nathan executed their promissory note, whereby they promised to pay to the Carbonate Bank of Leadville, Colorado, ninety days after the date thereof, the sum of twenty-five hundred dollars ($2,500), the payment of which said note is guaranteed by the said Samuel Rich, and also by S. Hirsch and David May.

And whereas the said Samuel Rich, on the 18th day of January, A. D. 1887, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, on February 1st, A. D. 1887, the sum of seven hundred and fifty dollars ($750), on which said note there was paid February 3d, A. D. 1887, the sum of two hundred and fifty dollars, and the payment of which said note is, for a valuable consideration, guaranteed by the said A. Hirsch.

And whereas the said Samuel Rich, on the 5th day of February, A. D. 1887, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadville, Colorado, forty-five days after the date thereof, the sum of eleven hundred and fifty-eight dollars ($1,158), the payment of which said note is, for a valuable consideration, guaranteed by the said A. Hirsch and the said David May.

And whereas the said Samuel Rich, on the 10th day of February, A. D. 1886, executed his promissory note whereby he promised to pay to the Carbonate Bank of Leadiville, Colorado, thirty days after the date thereof, fifteen hundred dollars ($1,500), which said note is signed by the said David May as surety for the said Samuel

Rich, and on which note there was paid, February 16th, A. D. 1887, fifty-five dollars ($55); February 17th, A. D. 1887, sixty dollars ($60); February 24th, A. D. 1887, ninety-six dollars ($96), and March 1st, A. D. 1887, one hundred eighty-five and $\frac{75}{100}$ dollars ($185.75).

And whereas on the 4th day of March, A. D. 1887, the said Samuel Rich executed his promissory note whereby he promised to pay the Carbonate Bank of Leadville, Colorado, twenty days after the date thereof, the sum of eleven hundred and seventy dollars ($1,170), which said note is signed by the said A. Hirsch as surety for the said Samuel Rich, and on which said note there was paid, on the 4th day of March, A. D. 1887, the sum of five dollars ($5), all of which said notes bear interest at the rate of one and one-fourth per cent. per month.

And whereas said notes are all now due and, except as hereinbefore stated, unpaid.

And whereas the said Samuel Rich is legally liable to pay the whole amount due on said notes, and is unable to pay the same, or any part thereof.

And whereas the said The Carbonate Bank of Leadville, Colorado, threatens to commence suit by attachment against the said Samuel Rich on the note first hereinbefore mentioned, and to attach the property hereinafter mentioned of the said Samuel Rich.

And whereas the said A. Hirsch and David May have assumed the payment of said note, and have become liable and responsible therefor to said bank.

And whereas the said David May and A. Hirsch are legally liable and responsible for the amount due on the residue of said notes, each for a certain portion thereof, and have agreed to take up and pay the same.

Now, therefore, in consideration of the premises, and in consideration of the the sum of one dollar ($1.00) to the said Samuel Rich in hand paid by the said David May and A. Hirsch, the receipt whereof is hereby acknowledged, the same Samuel Rich has granted, bargained and sold, and by these presents does grant, bargain and sell unto the said David May and A. Hirsch all that certain stock of men's, boys' and children's clothing, hats, caps and gents' furnishing goods being and contained in that certain store room, in the City of Leadville, County of Lake and State of Colorado, known as No. 313 Harrison avenue, together with all and singular the show cases, counters, shelving, chandeliers, and all other property of every kind in said room pertaining to the business of the said Samuel Rich, which said stock of goods is the property of the said Samuel Rich, and now in his possession in said place:

To have and to hold all and singular the said goods and chattels unto the said David May and A. Hirsch, their heirs, administrators and assigns forever.

And the said Samuel Rich, for himself, his heirs, executors and administrators, does hereby covenant to and with the said David May and A. Hirsch and their assigns, that he is legally possessed of the said goods and chattels as of his own property; that the same are free and clear from all encumbrances, and that he will and does warrant and defend the same to the said David May and A. Hirsch and their assigns against the legal claims and demands of all persons.

The said David May and A. Hirsch shall take the immediate possession of all of said goods and chattels and of the said room in which they are contained as aforesaid, and shall proceed to sell and dispose of the same with

reasonable diligence at private or public sale, as they may deem best, and out of the proceeds of such sale of said goods and chattels pay :

1st. The amount due on said notes, with the interest thereon, and the costs and expenses of such sale.

2nd. Rendering the surplus, if any, to the said Samuel Rich, his executors, adminitrators or assigns.

Provided, however, that if the said Samuel Rich shall, at any time before a sufficient quantity of said goods and chattels shall be sold to realize a sum sufficient to pay said amount due and said expenses, pay to the said David May and A. Hirsch or their assigns the amount due on said notes or the balance which may be due thereon after deducting the net amount realized from such sale, then these presents shall be void and the residue of said goods remaining unsold shall be delivered to the said Samuel Rich and possession thereof restored to him.

In witness whereof, the said Samuel Rich has hereunto set his hand and seal, this twenty-fourth day of March, A. D. 1887.

(Signed) SAM. RICH. [Seal.]

Signed, sealed and delivered in presence of .....

State of Colorado, } ss.
County of Lake, }

I hereby certify that this chattel mortgage was acknowledged before me by Samuel Rich, whose name is above subscribed, this twenty-fourth day of March, A. D. 1887.

[Seal.] (Signed) JAMES B. KNOBLOCK,
Notary Public.

(Indorsed) 6522. Ex. "2," Chas. A. Hinckley.

State of Colorado, } ss.
County of Lake, }

Filed for record at 8:35 o'clock A. M., March 25, 1887, and duly recorded in book 91, page 383.

(Signed) F. M. REARDON, Recorder.

Fees, $2.50.

BRIEF.

Three questions seem to be presented by this appeal:

I.

Is the deed of March 24, 1887, under the circumstances of this case, to be regarded as in legal effect a general assignment by an insolvent debtor of his property for the benefit of his creditors, or as a mere chattel mortgage for the security of May and Hirsch?

II.

If an insolvent assignment, are the creditors of the old firm of Nathan & Co., whose indebtedness was assumed by Rich, entitled to share in the distribution of the fund?

III.

Was the value of the property for purposes of distribution correctly found by the master and approved by the court?

Subsidiary to the first question is one of fact, viz.:

Did the deed embrace substantially all of Rich's property, that is, everything which formed his stock in trade; all upon which he could depend for the means to carry on his business and maintain himself and family; everything which could have been available to his creditors by means of the ordinary processes of law for the collection of debts? This we shall consider incidentally

in connection with the main question, but regard it as practically disposed of by the finding of the court, the reasons for which are expressed in the opinion of July 30, 1888.

The only provisions of the Colorado statute which we deem applicable are the first four sections of the act approved April 10, 1885 (P. L. p. 43), entitled "An act in "relation to assignments for the benefit of creditors, and "to repeal acts inconsistent therewith;" which are as follows:

(H. B. 222.)

AN ACT

in relation to assignments for the benefit of creditors, and to repeal acts inconsistent therewith.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Any person may make a general assignment of all his property for the benefit of his creditors by deed duly acknowledged, which, when filed for record in the office of the clerk and recorder of the county where the assignor resides, or, if a non-resident, where his principal place of business is, in this State, shall vest in the assignee the title to all the property, real and personal, of the assignor, in trust, for the use and benefit of such creditors.

SEC. 2. The assignor shall annex to such assignment an inventory under oath, of his estate, real and personal, according to the best of his knowledge, with the estimated value thereof, and also a list of his creditors, giving their names, residence, if known, and the amount of their respective demands; but such inventory shall not be con-

clusive of the amount of the assignor's estate, nor shall the omission of any property from such inventory defeat the asssignment or conveyance of the same.

Sec. 3. No such deed of general assignment of property by an insolvent or in contemplation of insolvency for the benefit of creditors shall be valid, unless, by its terms, it be made for the benefit of all his creditors, in proportion to the amount of their respective claims.

Sec. 4. In case of the assignment of property for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed.

I.

Recurring, then, to the deed of March 24, 1887, our first contention is this:

FIRST.

THE DEED ON ITS FACE APPEARS TO HAVE BEEN INTENDED AS AN INSOLVENT ASSIGNMENT FOR THE BENEFIT OF CREDITORS, AND CONTAINS NONE OF THE DISTINGUISHING ELEMENTS OF A MORTGAGE.

Let us here, for convenience, state the various items of indebtedness embraced in this deed in such a manner as to exhibit the relations of the parties thereto

They are as follows (*Record, p. 121, etc.*):

1. Note of the Nathans and Rich to Carbonate Bank for $7,000, dated December 10, 1885. "Which note the "said Samuel Rich is legally bound to pay. On this note neither May nor Hirsch was liable.

2. Note of Rich to the bank for $1,000, dated July 14, 1886. Guaranteed by Hirsch.

3. Note of Rich to the bank for $1,500, dated Aug. 2, 1886. Guaranteed by Hirsch.

4. Note of Rich to the bank for $2,500, dated Aug. 2, 1886. Guaranteed by Hirsch.

5. Note of Ed. and Nat. Nathan to the bank for $2,500, dated Dec. 7, 1886. Guaranteed by Rich and May.

The S. Hirsch referred to in connection with this note was not the appellant, A. Hirsch.

6. Note of Rich to the bank for $750, dated January 18, 1887. Guaranteed by Hirsch.

7. Note of Rich to the bank for $1,158, dated Feb. 5, 1887. Guaranteed by Hirsch and May.

8. Note of Rich to the bank for $1,500, dated Feb. 10, 1887. Signed by May as surety.

9. Note of Rich to the bank for $1,170, dated March 4, 1887. Signed by Hirsch as surety.

It will be observed that on the second, third, fourth, sixth and ninth of these notes Hirsch was liable and May was not; on the fifth and eighth May was liable and Hirsch was not; on the seventh both Hirsch and May were liable, and on the first neither Hirsch nor May was liable.

After describing this indebtedness, the deed recites as its inducement:

"And whereas said notes *are all now due* and, "except as hereinbefore stated, unpaid.

"And whereas the said *Samuel Rich is legally liable* "*to pay the whole amount due on said notes, and is unable* "*to pay the same, or any part thereof.*

"And whereas the said Carbonate Bank of Lead- "ville, Colorado, threatens to commence suit by attach- "ment *against the said Samuel Rich on the note first* "*hereinbefore mentioned*, and to attach the property here- "inafter mentioned of the said Samuel Rich."

(Note: That the bank was not threatening suit against May or Hirsch, nor upon any of the notes on which they were liable, but on the only one on which they were not liable.)

"And whereas the said A. Hirsch and David May "*have assumed the payment* of said note and have become "liable and responsible therefor to said bank.

"And whereas the said David May and A. Hirsch "are *legally liable and responsible* for the amount due *on* "*the residue* of said notes, *each for a certain portion* "thereof, and *have agreed to take up and pay the same.*"

The court will note the distinction which the parties were careful to assert between the origin and character of the then present liability of May and Hirsch upon the first note and that upon the residue of the notes. As to the first, it was a liability assumed for the purpose of averting the threatened attachment of Rich's property, which would give the control of its disposition into the hands of the bank, while as to the rest it was an original collateral liability of May and Hirsch, each for a certain portion, in consequence of which they have agreed to take up and pay the same.

It will also be noticed that here is no declaration that these notes or any or them have in fact been taken up and paid by May and Hirsch; on the contrary, it is expressly recited that they are *due and unpaid;* that as to the first note, May and Hirsch have together assumed its payment, and as to the others, they have agreed to take up and pay them.

So, then, according to these recitals, *the bank* is the creditor, holding all of these notes. Rich is the debtor of the bank only, for the amount due on these notes, and while May and Hirsch are also debtors of the bank, *Rich*

does not owe them a dollar. Such being the situation as declared by the parties themselves in this instrument, and "in consideration of the premises," Rich proceeds to convey his property to May and Hirsch, in the form appropriate to an absolute conveyance, giving them the right or rather, requiring them, to take immediate possession of the property and of the storeroom.

Then follows a declaration of the purpose and object of the conveyance:

"The said David May and A. Hirsch * * * shall proceed to sell and dispose of the same with reasonable diligence, at private or public sale, as they may deem best, and out of the proceeds of such sale of said goods and chattels pay:

"First. The amount due on said notes, with the interest thereon, and the costs and expenses of such sale."

Here, it seems to us, was a plain, direct and specific trust in favor of the bank, created by this deed. And there can be no doubt that, if the deed was valid, the bank could have compelled the execution of this trust by May and Hirsch *as a trust*, and would not have been obliged to rely upon the mere personal liability created by their assumption of the debt.

The provision which follows for return of the surplus to Rich is, of course, equally appropriate to a mortgage and to an assignment, being wholly unnecessary in either, since it is implied by law.

We find, then, in this deed all the elements necessary to constitute an insolvent assignment for the benefit of creditors, viz.:

1. An insolvent debtor, unable to pay his matured obligations, desirous of appropriating his property for their payment, viz.: Samuel Rich.

2. A creditor, holding these matured obligations, viz.: The Carbonate Bank of Leadville.

3. Property of the debtor, available for the payment of these obligations.

4. Assignees, willing to undertake the conversion of this property into money for the payment of these obligations, viz.: May and Hirsch.

5. A conveyance of the property by the debtor to the assignees, upon the trust to convert it into money and pay the debts out of the proceeds.

Burrill on Assignments, sec. 122.

So far, certainly, there are in this instrument none of the distinguishing elements of a mortgage. Mortgages are given for the purpose of securing the performance by the mortgagor of some obligation—usually the payment of money—at some future time, either directly to the mortgagee or to some other person to whom the mortgagee is collaterally liable, the mortgage in such case providing indemnity for actual loss arising upon such liability.

Their primary object is not to appropriate the property to the immediate discharge of the obligation, but to give the debtor opportunity to perform the obligation without the necessity of an immediate sacrifice of his property, and with the expectation that he will be able to do so.

The instrument in question presents none of these features.

The debts were already due, immediate payment was demanded and suit by attachment threatened; for a large portion of the debt the assignees were liable, and a disposition of the property by adverse legal process would greatly imperil their interests, and probably result in a

large draft upon their personal resources, and so they arranged with the bank to forbear the threatened suit, in order to give them the opportunity to procure from the debtor a transfer to them of his property upon the trust to convert it at once into money, and pay the bank out of the proceeds.

This distinction between a mortgage or deed of trust in the nature of a mortgage and an assignment, has been frequently pointed out.

"The latter is a conveyance to a trustee for the purpose of *raising a fund to pay debts*, while the former is a conveyance in trust for the purpose of *securing a debt* subject to a condition of defeasance."

Hoffman v. *Mackall*, 5 Ohio St. 124–130.
See also *Woodruff* v. *Robb*, 19 Ohio 216.
Foreman v. *Burnette* (Texas), 18 S. W. 756.
Appolos v. *Brady*, 49 Fed. 401.
Marshall v. *Livingston Nat. Bank*, 28 Pac. 312.
Perry v. *Corby*, 21 Fed. 737.

The case of *Appolos* v. *Brady* is very much like the one at bar, and the case of *Marshall* v. *Livingston* is, in all its essential features, well nigh identical — except that the conveyance in that case was directly to the creditor, and was held, nevertheless, to be an assignment, and not a mortgage nor a conveyance in payment of the debt, from both of which classes of instruments the court particularly distinguishes it.

In the case at bar the creation of the trust in third persons to sell and pay the debts is a conspicuous feature of the instrument; a feature which, in itself, would seem

to fix conclusively the character of the transaction as an assignment.

Burrill on Assignments, sect. 3, notes and cases.

We remark just here that it was probably the omission by the learned judge before whom this cause was tried, to notice these particular and important features of the deed, viz.: the real creditor and the consequent trust, which led him to that wider search for the principles involved to which we have already referred in our opening statement, since he assumes, throughout the case, that the indebtedness provided for in the deed was due to May and Hirsch, whereas it is perfectly plain on the face of the instrument that the bank was the only creditor. May and Hirsch had only assumed and agreed to pay; there is no suggestion that they had in fact paid; on the contrary, the obvious intent and purpose of the conveyance was to provide them the means wherewith to pay.

Whether it could have been shown, for the purpose of fastening another interpretation upon this instrument contrary to its terms, that May and Hirsch had in fact paid the entire amount of this indebtedness to the bank at the time this deed was executed, thus making Rich their debtor, we need not inquire. As we shall hereafter show, there is in the record no evidence that they had done so.

But the instrument in question does contain one clause which, doubtless, will be relied on as sufficient to give it the charater of a mortgage. It is as follows (*Record, p. 124*):

"Provided, however, that if the said Samuel Rich shall at any time before a sufficient quantity of said goods and chattels shall be so sold to realize a sum sufficient to pay

said amount due and said expenses, pay to the said David May and A. Hirsch, or their assigns, the amount due on said notes or the balance which may be due thereon after deducting the net amount realized from such sale, then these presents shall be void, and the residue of said goods remaining unsold shall be delivered to the said Samuel Rich, and possession thereof restored to him."

We might, perhaps, content ourselves with the suggestion that this proviso is void for uncertainty, since it does not profess to reserve to Rich an equity of redemption in any particular goods, but only in such as may happen to remain unsold at the moment he comes forward with cash in hand to pay the balance of his indebtedness, whether $15 or $15,000; but it seems very evident that this clause was only inserted for the purpose of giving a false color to the instrument. It could not have been honestly supposed that this insolvent debtor, confessedly unable to pay his matured debts, threatened with attachment suits, conveying his property to trustees to sell at once and pay these debts, was likely to engage forthwith in a race with his trustees to see if perchance he might yet be able to pay his debts by some other means before they could effect a sale.

By this very transfer to them he had divested himself of all resources of property and credit, and they knew it. This instrument was drawn by their attorneys; Rich swears that he neither read it nor heard it read (*Record, p. 256*). They undertook, by the use of this clause, to label the instrument as a mortgage, but the label is obviously fictitious, and will deceive no one.

As was said by this court in the *Cotzhausen* case, *infra*, "Courts of equity are not to be misled by mere devices, nor baffled by mere forms."

A similar attempt was made in the case of *Marshall*

v. *Livingston Bank*, *supra*, but the court held the alleged defeasance to be one in words only, and that in view of the real purpose of the instrument, as shown by its other provisions and the acts of the parties, no defeasance was actually contemplated or provided in the transaction.

See also on this point :

Bonns v. *Carter*, 20 Neb. 566.

The trial court, as it seems to us very properly, regarded this clause as being at best, under the circumstances, a superfluity, the mere declaration of a right implied by law.

In his opinion, delivered July 30, 1888, the learned judge says :

"As to what is said about the right of Rich to redeem at any time before the sale, I apprehend that that would have been equally as good under an assignment. * * * There can be no doubt in any instance in which an assignment may be made, if, by some good fortune, the debtor immediately comes into a condition in which he may pay his debts, he may at once satisfy his creditors and demand a return of the goods without any such provision of law" (referring to the statute providing for discontinuance of proceedings by stipulation).

We think, therefore, that this deed must be regarded as, in form and purpose, an assignment of the debtor's property to trustees in trust for the payment of debts, and as showing upon its face that the debtor was insolvent at the time.

So much is apparent without reference to any extrinsic evidence in the case; nor does that evidence in any wise contravene the plain statement of the deed that it was the bank which was then the creditor for whose benefit the assignment was made, or the evident fact that the benefit to accrue to May and Hirsch from the trans-

action, was relief from the obligations assumed by them to the extent of the amount realized from the sale of the property.

Testifying concerning the $7,000 note, "Exhibit 9," May says (*Record, p. 97*) that he and Hirsch "gave" (the bank) "a note for it, and paid it afterwards in cash." *When* they gave this note is not stated, but the testimony concerning it is, with some apparent ingenuity, so interwoven with that which relates to other incidents of the transaction as to make the impression upon a casual reader that the note was given before the mortgage was taken.

May's counsel then asks him this question:

"Q.—State whether or not you and Adolph Hirsch, prior to taking this mortgage alluded to *assumed or paid* all the notes mentioned in said mortgage and those that I have introduced in evidence, as a consideration in the mortgage?"

To which May answers.

"A.—Yes, sir; we did."

Again, in the course of Hirsch's examination occurs this testimony (p. 114):

"Q.—Had you and Dave May *paid or assumed* the indebtedness the mortgage was given to cover?

"A.—Yes, sir."

If they had in fact "paid" it, the questions could hardly have presented the alternative—"or assumed."

The $7,000-note itself (*Exhibit 9, p. 127*) shows this endorsement:

"Pay to David May and A. Hirsch or order, without recourse on us.

"J. C. MITCHELL & Co."

Who J. C. Mitchell & Co. were, or when or why they endorsed this note to May and Hirsch, does not appear.

One fact significant in this connection is disclosed by the master's report of the claims proven before him by Rich's creditors and upon which he based his distribution of the fund, viz.:

May and Hirsch proved their claim as a *promissory note for $18,400, dated April 4, 1887*, drawing interest at 10 per cent. per annum.

SECOND.

THE DEED COVERED SUBSTANTIALLY ALL OF THE DEBTOR'S PROPERTY, AND WAS, THEREFORE, A GENERAL ASSIGNMENT FOR THE BENEFIT OF CREDITORS, MADE BY AN INSOLVENT DEBTOR.

As we have already stated, the fact is found by the court, that the deed did embrace, substantially, all of Rich's property, and we do not suppose the correctness of that finding will be seriously challenged, being amply supported by the evidence.

We will call the attention of the court, however, to one item of evidence in this connection, viz.: Rich testifies (page 250) that when he was taken by May and Hirsch up to the office of their attorneys to execute this deed, he called them into a private room and said to them, "*Gentlemen, I am left penniless.*"

Although May and Hirsch in their testimony deny other portions of that conversation as narrated by Rich, they do not deny that he made that statement. Again, on page 238, in answer to the question (p. 237), what property he had at the time which was not included in the mortgage, Rich testified: "Everything that I possessed "was included in the mortgage at that time. I did not "have any property, money, or anything that was not in- "cluded in the mortgage."

Other evidence on this point on behalf of both parties gives details relating to certain property in which Rich at one time had an interest, but we do not deem it necessary to discuss it.

As to the meaning of the phrase, "all the debtor's property," see:

Burrill on Assignments, sect. 122, and notes.
United States v. *Hooe*, 3 Cranch. 73 (p. 91).
United States v. *Clark*, 1 Paine, 629.
Mussey v. *Noyes*, 26 Vt. 462 (pp. 473-4).

In the first case cited it was construed to mean "such "a general divestment of property as would, in fact, be "equivalent to insolvency in its technical sense," and in the Vermont case it was said that an assignment which includes all one's attachable property, and which is intended to close up one's business, and do so at once, is clearly a general assignment.

THIRD.

We have thus far endeavored to show that the deed of March 24, 1887, was manifestly a general assignment for the benefit of creditors, without invoking the aid of that principle which has so often led courts to declare that when an insolvent debtor, having reached the point where he has determined to give up his business and surrender the dominion over his entire estate, transfers the whole, or substantially the whole of his property, whether directly or indirectly and by whatever means, to a part of his creditors, in order to give them a preference over other creditors, such transfer operates as a general assignment. But the learned judge who presided at the trial of this cause in the Circuit Court evidently regarded this case as coming within that

principle, and so decided it. In justice to him, and in the belief that the decree appealed from can be sustained on that basis, we present the point to this court.

At the time this case first came before the Circuit Court the case of *White* v. *Cotzhausen*, 129 U. S. 329, had not been decided, but the learned judge felt constrained to follow the numerous decisions of cases of that class in various Federal Courts of that circuit, in which he announced his entire concurrence.

On March 1st, 1889, the cause was finally heard on exceptions to the master's report, and the court, in an oral opinion then given, referred to the then recent decision in the Cotzhausen case as sustaining the conclusion reached by it in the case at bar.

The questions involved in the application of the statute concerning assignment to transfers by insolvent debtors of all their property for the benefit of one or more favored creditors, by means apparently designed to evade the operation and effect of the statute, have never, so far as we are aware, been decided by the Supreme Court of Colorado, and the Federal courts are therefore at liberty to decide them according to their own judgment.

If we correctly understand the opinion of this court in the case of *White* v. *Cotzhausen*, although that case arose upon the statute of Illinois, and was decided in accordance with what the court understood to be the construction placed upon that statute by the Supreme Court of that State, it also expressed the judgment of this court that, in those States whose laws in relation to insolvent assignments manifest a legislative intention that such assignments shall be for the equal benefit of all creditors, all transfers by insolvent debtors whereby the possession and dominion of their entire estate are surrendered to one or

more favored creditors for the purpose of giving them a preference in the distribution of the estate, will, in the absence of local adjudication to the contrary, be regarded as violations of the statute, for which equity will supply the appropriate remedy.

It would be entirely superfluous for us to review that case for the purpose of applying to the case at bar the principles there announced. It seems to us that the instrument in question manifestly falls within the class indicated.

The doctrine of *White* v. *Cotzhausen* has been repeatedly recognized by the highest courts of several of the States. We cite a few instances :

Bonns v. *Carter*, 20 Neb. 566.
Same case on rehearing, 22 Neb. 495 (p. 517).
Cribb v. *Hibbard*, 77 Wis. 199 (p. 204, etc).
Straw v. *Jenks*, 6 Dak 414.
Marshall v. *Livingston Bank* (Montana), 28 Pac. 312.
Putney v. *Friesleben*, 32 So. Car. 492.
Richmond v. *Miss. Mills*, 52 Ark. 30.
Kendall v. *Bishop*, 76 Mich. 634.

FOURTH.

BEING A GENERAL ASSIGNMENT OF PROPERTY BY AN INSOLVENT FOR THE BENEFIT OF CREDITORS, THE DEED WAS INVALID BECAUSE NEITHER IN FACT NOR BY ITS TERMS, MADE FOR THE BENEFIT OF ALL CREDITORS PRO RATA, AND THE DEFENDANTS WERE CHARGEABLE WITH THE VALUE OF THE PROPERTY FOR DISTRIBUTION AMONG THE CREDITORS ENTITLED THERETO.

Two somewhat important differences are noticeable between the Illinois statute and that of Colorado, viz.:

1. The Illinois law applies in terms to "all cases of voluntary assignment made for the benefit of creditor or

creditors." (Sec. 1. Act approved May 22, 1877.) The Colorado law provides only for general assignments, and seems, in its first and third sections, to distinguish between those general assignments which any person may make, and those which may be made by one insolvent or in contemplation of insolvency.

2. The Illinois law avoids preferences in all assignments, and declares that all debts and libilities within their provisions, shall be paid *pro rata*.

The Colorado law, in its third section, declares that no deed of general assignment by an insolvent, etc., shall be valid, unless by its terms made for the equal benefit of all creditors *pro rata*.

The case at bar undoubtedly falls within the terms of this section of the Colorado statute, and a consideration of the effect of this statute upon the rights of the parties is therefore necessary.

Had any creditor of Rich attached this property in the hands of May and Hirsch, it can hardly be doubted that this deed would not have availed them as evidence of title.

But at the time this bill was filed the property had been sold by May and Hirsch, and the question is as to their accountability for its value. The law says the deed was not valid, and one thing at least must be pretty certain, viz., that that provision was not intended for the benefit of either the assignor or assignee.

Not having received any copy of appellants' brief, we do not know what position they will take on this point, and can, therefore, only state the case as it now appears to us.

The bill was framed on the theory that this conveyance, being the offspring of a fraudulent conspiracy and in

violation of the statute, and operating to hinder, delay, and defraud complainant in the collection of his debts, he was entitled to a decree adjudging it fraudulent and void, and requiring May and Hirsch to pay into court, for complainant's benefit, the value of the property taken and converted by them thereunder.

In our opinion, a decree of that character could probably have been sustained on grounds which it is unnecessary to state here; but the Circuit Court evidently proceeded upon the theory that, inasmuch as the purpose of the statute was to secure a distribution of the insolvent estate for the equal benefit of all creditors, it would not accord very well with that purpose to take the estate away from one creditor and give it to another, leaving others still unprovided for, thus avoiding a voluntary preference in order to create an involuntary one.

The statute declares such a deed as this invalid, but it does not intimate, and it would be doing violence to its spirit and purpose to presume, that those who assume the execution of trusts declared in such invalid deeds are therefore discharged from all obligation in respect to the disposition of the property. On the contrary, the law at once imposes upon them its own trust, one whose obligation they cannot escape. Whether that trust is one which in law properly inures to the prior benefit of the creditor whose diligence first overtakes the violators of the law, completely excluding the trustees themselves, or to the equal benefit of all creditors, including the trustees, is a question which does not arise on this appeal. In this case, though the deed itself was invalid, the transfer of the property thereunder to the appellants and its unlawful conversion by them to purposes not sanctioned by the law,

were complete, and they were clearly liable for its value. As the record shows, these appellants were admitted to share in the reclaimed fund on the basis of an indebtedness apparently created eleven days after the execution of the assignment, and the share decreed them is larger than they would have received had the complainants in the two bills secured a decree in accordance with their prayer.

II.

The creditors of the old firm of Nathan & Co. are entitled to share in the distribution of this fund.

The point does not seem to us to admit of discussion; we only call attention to the fact noted by Judge Hallet and apparent from the record, that one of these old debts of Nathan & Co., viz., the note for $7,000 (*Exhibit 9, Record, pp. 121 and 127*), entered very largely into the consideration of the claim proved against the fund by the appellants themselves, so that they could hardly be heard to raise the point were there any legal merit in it.

III.

The value of the property for purposes of distribution was correctly determined.

The report of the master to whom the question of value was referred (*Record, pp. 334, etc.*), with the evidence upon which the same was based, shows that the testimony upon this point was very conflicting, and that the master gave the matter careful consideration, aided by a personal experience which rendered him peculiarly

fitted to reach a just conclusion. This report, on exception, was approved by the Circuit Court, and we can find nothing in the record justifying an appeal to this court to reverse that conclusion.

It is respectfully submitted that the decree appealed from should be in all respects affirmed.

D. K. TENNEY,
Solicitor pro se.

WILLIAM E. CHURCH,
Of Counsel.

OPINIONS OF CIRCUIT COURT.

United States of America,
District of Colorado.

In the Circuit Court of the United States, March 5th, 1888.

HALLETT, J. (orally):

There are two creditor's bills against Samuel Rich, David May and Adolph Hirsch, the object of which is to set aside a chattel mortgage made by Rich to Hirsch and May, which it is charged was fraudulent as to creditors.

One of these bills is filed by Daniel K. Tenney, and the other by three persons named Leopold. Mr. Tenney holds the demands of several merchants for goods sold to the defendant Rich, and also some demands which were held by other persons against the same party for money loaned. The Leopold indebtedness was for goods sold by the plaintifis to the defendant Rich. Both these parties complainant obtained judgment against Rich for the amount due upon the several demands, and these bills were filed after execution was issued upon the judgments and returned unsatisfied.

It is charged in the bills that Rich was in failing circumstances during the year 1886 and the early part of 1887; that, by the advice and approval of the other defendants, May and Hirsch, he proceeded to eastern cities and purchased a large amount of goods under false representations as to his solvency and responsibility, and brought these goods out to his store in Leadville. That the scheme between himself and May and Hirsch was that these goods should be turned over to May and Hirsch in sufficient quantity to pay them for some indebtedness due to them for some liabilities they had incurred to a bank in

Leadville on his account; then an assignment should be made by Rich, and when affairs should be brought to a proper point a settlement of the indebtedness of Rich should be obtained upon the best terms, probably about 25 cents on the dollar, with the eastern creditors. In this way May and Hirsch to be paid in full whatever was due to them, and in respect to any debts of Rich that they had assumed at the bank. The eastern creditors, especially those from whom the purchases were made in the early part of the year 1887, would get but a small part of what was due them.

Rich was unable to purchase as much as was intended. It was expected he would get goods of the value of thirty or thirty-five thousand dollars, but he did in fact only get about $16,000 worth, which were brought to Leadville and put into the general stock of goods held by him there. Upon the return of Rich from the east, which was about the time that the recent purchases were arriving also, he gave a chattel mortgage to May and Hirsch securing them for the indebtedness due to them and for the paper which they had endorsed to the bank. The whole amount of this indebtedness, including the paper on which May and Hirsch were liable to the bank, was about $18,400. May and Hirsch getting possession of the goods in this way, shortly afterwards sold them in bulk for much less than their value, and the circumstances of the sale were fraudulent as to creditors.

It is also averred, I believe, that there was an understanding different from that which had previously existed between Rich and May and Hirsch, at the time that the chattel mortgage was made by Rich to May and Hirsch; that this should be only a formal and collusive proceeding; that as soon as terms

could be made with the eastern creditors, Rich should be be allowed to resume control of the store and continue business therein. As to the matters alleged in respect to the purchase of the goods in the east, the false representations as to Rich's ability and his intention to pay for them, upon these bills it is to be remarked that nothing can be claimed by complainants independently of what follows. The circumstances, if they are regarded as established by the evidence, may be taken to give color to the subsequent conveyance by chattel mortgage from Rich to May and Hirsch, but standing alone as a fraudulent purchase by Rich of goods from eastern merchants upon false representations, the remedy of the parties defrauded is only by rescinding the sale and proceeding for the value of the goods or the goods themselves. That course was pursued by another creditor, who brought an action at law and recovered judgment in this court. These parties, in so far as their demands are for goods purchased by Rich during the month of February, 1887, have affirmed those sales by bringing an action for the price of the goods. This, I believe, is a proposition that is recognized in all the books in which it is considered.

It is said in Benjamin on Sales, page 366, sec. 433, that by suing for the value of the goods, the sale which was prior to that time voidable for the fraud committed upon the seller, may be regarded as confirmed. As I stated before, I suppose there is no question as to that proposition. In so far as the averments of these bills and the demands themselves rest upon the purchase of goods shortly before the making of the chattel mortgage, it may be said that these creditors are not in a position to claim anything in respect to the fraud committed upon them in purchasing the goods.

The averment that there was an agreement and understanding at the time that the chattel mortgage was made by Rich to May and Hirsch, that Rich should resume possession of the store, is left much in doubt by the testimony. Rich testifies to it, and one or two other witnesses mention circumstances which may be regarded as corroborating his testimony to some extent, but this is stoutly denied by the defendants in the suit; and whatever may have been said by the defendants May and Hirsch to Rich at the time this mortgage was given, to induce Rich to give it to them, the position of the defendants, May and Hirsch, at that time was such that we may readily assume that their only object was to obtain payment of the demands due them, or security for such demands. It is quite possible that some statements or declarations may have been made by May and Hirsch to Rich at that time as to what they would do for him thereafter to induce him to make this transfer to them, and altogether probable that the parties making them had no intention to carry out and perform their promise, whatever it was, and had only the object and purpose in view of securing the amount due them and those for which they were liable to the bank. If it was only a deceit, a wrong practiced upon Rich, rather than a scheme recognized by both parties to the transaction to defraud other creditors, it would not be a matter of which other creditors could avail to share in the proceeds of the property. Of course I recognize the law that if parties agree among themselves in a scheme to defraud third parties, creditors of one of them, that anything that may take place, any agreement that may be made in pursuance to that scheme, may be void as to the creditors on the ground

of fraud against them; but if, on the other hand, the parties practicing such deceit, or charged with the practice of such deceit, only intend to secure themselves in respect to demands which they hold against the debtor, and what they do is in the way of falsehood and deception toward the debtor to induce him to act; to make the transfer to comply with the wishes of the person so deceiving and misleading him, it does not avail third parties as a means of recovery against the parties first named or the debtor.

Upon all the evidence it cannot be clear — at least it is not clear to my mind — that there was any such agreement between Rich and May and Hirsch accepted and concurred in by May and Hirsch at the time of this transfer, as is alleged in the bill of complaint.

Furthermore, if it be taken as established that there was such an agreement and understanding, the statute in relation to assignments in this State has left the matter in some doubt as to the effect of it.

In the third section of this act of 1885 it is declared that "No such deed of general assignment of property by "an insolvent, or in contemplation of insolvency for the "benefit of creditors, shall be valid, unless by its terms it "be made for the benefit of all his creditors, in proportion "to amount of their respective claims."

And in the 18th section, "No assignment shall "be invalid because of misappropriation of the property "of the debtor by him prior to the assignment, but the "assignee may recover such property, if so misappro-"priated in fraud of this act. But nothing in this act con-"tained shall invalidate any conveyance or mortgage of "property, real or personal, by the debtor before the "assignment, made in good faith, for a valid and valuable "consideration."

Whether under an act containing provisions of this kind a debtor assigning property for the purpose of paying certain creditors, whatever the form of the instrument may be, if it appear distinctly that in some features of it the assignment is colorable and fraudulent — in other words, in the language of this act, that there has been a misappropriation of property by the debtor — whether it can be avoided altogether for the misconduct of the debtor in that respect, is not altogether clear; so that with reference to that matter, if it were clearly proven that this conveyance was made with a view to defeat the provisions of the assignment act and to defeat the creditors of Rich other than May and Hirsch, it would be something of a question whether the conveyance could be set aside to the extent and in the manner demanded by complainants.

There is another view of the matter which was not much discussed, or, perhaps, not discussed at all in the argument of these cases at the bar, and that is whether this paper, if it covered all of the property of Rich, is not to be taken as an assignment subject to the provisions of the act of 1885, whatever its form may be, and upon that point I have arrived at the conclusion that if it is an assignment of all the property, or a conveyance of all of it, for the payment of these creditors, operating thus as a preference of these creditors, contrary to the terms of the act, that it may be regarded as of that character.

Whether it covers all of the property of the defendant Rich is not very clear upon the evidence. It seems to have been assumed by the counsel, in taking testimony in the case, that such was the fact. Expressions drop from the witnesses occasionally which lead to that conclusion—that all of the property was embraced in the chattel mortgage. It was averred in the bill that

all of the property was put into the chattel mortgage, and denied in the answer. The question was not asked directly of any witness put upon the stand, either on the part of complainants or of defendants. Counsel seemed to have ignored that as a question in the case; and from the expressions to which I have referred, used occasionally by the witnesses, to the effect that Rich had nothing left, or that his wife impoverished by this transaction—something like that—it may, perhaps, be inferred that the fact is that there was no other property than that which was covered by this chattel mortgage.

Assuming that the fact is so, and that all of the property was covered by the chattel mortgage, whether this, although in the form of a mortgage, shall be taken to be an assignment under the act, is a question which has received some consideration in the State of Missouri and in the Federal Courts of that district, under a statute not quite as strong as ours; that is, the statute of that State does not forbid preferences, I believe It has been held by the Circuit Court of that district, with some dissent on the part of Judge Brewer since he came to the bench, that whatever the form of the instrument, if its effect is to convey all the property of the debtor and give to the grantee a preference over other creditors, it shall be taken to be an assignment under the general act of that State, and subject to its provisions. The first case was decided by Judge Krekel, with the concurrence of Judge McCrary, *Martin* v. *Howson*, 4th Federal Reporter, 60. Afterward, in *Clapp* against *Dittman*, 21 Federal Reporter, 15, and *Perry* against *Corby*, 21 Fed. Rep. 737, this ruling was affirmed by Mr. Justice Miller, or I think by Judge Treat, with the concurrence of Justice Miller. Other cases bearing upon the same point, and in which the rule as

stated in the first decision is recognized, and in some of them affirmed, as I have stated, with some expressions of doubt by Judge Brewer, are:

Kerbs v. *Ewing*, 22 Fed Rep. 693.
Clapp v. *Nordmeyer*, 25 Fed. Rep. 71.
Freund v. *Yaegerman*, 26 Fed. Rep. 842.
Freund v. *Yaegerman*, 27 Fed. Rep. 248.
State v. *Morse*, 27 Fed Rep. 261.
Weil v. *Polack*, 30 Fed. Rep. 813.

In harmony with these decisions is the opinion given by Judge McCrary, in this court, in the case *Doggett, Bassett, Hills & Company* against *Herman Brothers*, 5th McCrary, 269.

In several States this rule is not recognized, the courts in those States going upon the ground that the intention of the parties shall control, with a disposition on the part of the courts to support the instrument in the form in which it is made, whatever its effect may be.

Cases of this character are:

Cadwell's Bank v. *Crittenden*, 66 Iowa, 237.
Carson v. Byers, 67 Iowa, 606.
Aulman v. *Aulman*, 71 Iowa, 124.
Waterman v. *Silberberg*, 67 Texas, 100.

The rule as announced in Missouri appears to be the rule for this circuit, and I can say that I concur in it entirely, not sharing the doubts expressed by Judge Brewer. I think this chattel mortgage, if, in fact, it covers substantially all of the property of Rich, is to be taken as assignment under the act of 1883; and the property conveyed by it is to be distributed pursuant to that

act, without regard to the circumstances, fraudulent or otherwise, attending the making of that instrument.

This view is not at all in conflict with the case of Campbell against the Colorado Coal and Iron Company, decided by the Supreme Court of this State, and reported in 9th Colorado, at page 60. In that case it was held by the Supreme Court of this State that a partial assignment of the property of a debtor for the purpose of paying a creditor in full was not opposed to the act of 1881 in relation to assignments, which forbade preferences in any instrument of that character.

Assuming that the same rule is applicable to the act of 1885, and I see no distinction that can be raised upon the terms of the later act, the decision of the Supreme Court of this State that a partial assigment by a debtor in payment of debts due the assignee is not in fraud of the act of 1881, does not approach the case of an assignment of all of the property of a debtor to the exclusion of creditors not mentioned in the assignment. Upon this general expression of opinion in relation to these issues I am inclined to refer this case to a master to take proof, if the parties shall regard that as a question to be contested whether the chattel mortgage covered all the property of Rich at the time it was made. If that becomes a question of controversy, it will of course be referred to the court for consideration after the testimony is taken.

If it is not controverted, then the master will proceed to ascertain the several demands of these creditors, the demands of May and Hirsch, as well as of these complainants and of any other creditors who may seek to become parties to this proceeding, and make some estimate of the value of the property conveyed by the chattel mortgage.

Upon the circumstances attending the mortgage and the fact that the parties were seeking to avoid the force and effect of the assignment act, I suppose the defendants are to be charged with the full value of the property, without reference to what may have been obtained from it upon sale or the expenses of disposing of it; and the accounting should proceed upon that hypothesis, having reference to all the demands against the property, including those of the defendants, May and Hirsch, and upon the basis of the full value of the property at the time that they received it, the property is to be distributed *pro rata* among the creditors of Rich at the time of the transfer.

In the Circuit Court of the United States, July 30th, 1888.

HALLETT, J.:

In Tenney against Rich and others, and another case of the same character, the conclusion was reached in March last that the mortgage executed by the defendant Rich to May and Hirsch, if, in fact, it conveyed substantially all of Rich's property to the defendant, might be regarded as an assignment under the act regulating such instruments in this State, and the defendants, May and Hirsch, would be liable to complainants to contribute a *pro-rata* share of the proceeds of the property obtained by the mortgage toward the payment of their judgments. Whether the mortgage covered all of the property of the defendent Rich was not clearly disclosed by the evidence then in the case, and it was left an open question to be considered upon further evidence, which has been put in. The defendants May and Hirsch have appeared recently and discussed that question, and also the principal ques-

tion as to whether the mortgage may be taken to be an assigment under the general act regulating such matters in this State. Counsel have discussed it at considerable length, and filed an elaborate brief, in which the authorities opposed to that view are cited at length, and they are not few in number, nor are they such as may be passed over lightly, or without full consideration. In the opinion given in March last a number of these authorities, the leading ones, were cited, enough to show that they had been considered very fully, and the court was not ignorant of the fact that the question was one that was not free from doubt; and upon this argument I have re-examined some of those cases, and they have not been passed over without consideration; but in view of what has been decided in this circuit, and especially of the position taken in *Clapp* against *Dittman*, and in *Perry* v. *Corby*, 21 Fed. Rep., I am still inclined to think that rule here must be that an instrument of this kind must be regarded as an assignment under the general act.

In this instance the principal defendants here, the parties who are to be charged, May and Hirsch, had been in very close relations with Mr. Rich, the debtor. It was charged, and there was evidence tending to prove, that his last purchases of goods were made with a purpose to increase his stock so as to give to these men a chance to collect their debts, and without any expectation on his part of being able to pay for the goods. In the suit brought by one creditor in this court to recover from May and Hirsch the value of goods which had been sold to Rich just prior to the execution of this chattel mortgage, a jury, upon a charge submitted to them of the facts connected with the transaction, with a view to determine whether this purchase had been made with the fraudulent intent to

transfer the goods to May and Hirsch, and without any intention on Rich's part to pay for them, found the fact to be as alleged by the plaintiffs, and upon that returned a verdict for the value of the goods against May and Hirsch; so that the evidence upon this hearing, which was very largely the same as that upon which the verdict was returned for these plaintiffs in the suit at law, was of a character to show that May and Hirsch were fully advised as to the condition of Rich, and that this mortgage was taken, not with the intention to continue the business, to allow Rich to go on with his business and fail in future, but in the way of a transfer of the goods to May and Hirsch to enable them to satisfy their demands against Rich out of the stock. Now, the proof being ample, full in every detail, to show that May and Hirsch were fully advised as to Rich's condition, fully aware of the fact that he could not go on with his business when this mortgage was taken, it appeared that immediately upon the execution of this instrument May and Hirsch entered into possession, and at once the stock of goods was closed out, a little more being obtained from it than enough to pay the demands of May and Hirsch and those which they had assumed to the Carbonate Bank, and the mortgage itself is not in the usual form of such instruments; that is to say, it is not in the form of such instruments in giving a future day of payment. It is in the general form of such instruments, except in one particular—after reciting the various notes and obligations upon which Rich had become liable to May and Hirsch, it provides that stock shall be transferred to May and Hirsch, who shall take the immediate possession of all said goods and chattels, and of the said room in which they are contained as aforesaid, and shall proceed to sell and dispose of the same with reasonable diligence at public or private sale, as they may deem

best, and out of the proceeds of said sale of goods and chattels pay, first, the amount due on said notes; second, rendering the overplus, if any, to the said Samuel Rich. That is to say, there was no future day of payment, but the mortgagees were to take possession at once and sell the goods immediately and apply them to the satisfaction of these debts. Now, the assignment, if it had been in the form of an assignment, could have done no more; and as to what is said about the right of Rich to redeem at any time before the sale, I apprehend that that would have been equally as good under an assignment. The statute of this State provides that proceedings may be discontinued at any time under the assignment law, upon a stipulation by the debtor and the creditors, looking, doubtless, to some method of carrying on the business and deferred payments, under which the debtor may be in a position to satisfy his creditors at some future day; but there can be no doubt in any instance in which an assignment may be made, if by some good fortune the debtor immediately comes into a condition in which he may pay his debts, he may at once satisfy his creditors and demand a return of the goods without any such provision of law.

Under all the circumstances, then, this transfer, though called a mortgage, being in effect an assignment conferring upon these men the right to dispose of these goods at once, and pay their own claims in preference to any others which might exist against Rich, there is not in my mind any doubt that it is what the Supreme Court of Pennsylvania calls a sham evasion of the general form of an assignment. In other words, the parties knowing the law in respect to an assignment, and that preferences under that law would avoid the assignment, if made in it,

chose this form of conveyance in order to avoid the force of the law.

Now, in a case of that kind it seems to me very clear that the law ought not to allow to go around the statute in that way, and the cases which adopt a different view, and accept the mere form of the instrument as conclusive of the whole matter are quite as convincing as any that can be found in support of this position.

Take the case of Waterman against Silverbrook, in 67 Texas, which is entirely parallel with this in every respect. It cannot be distinguished from this in all its material facts. The argument of the court in that case seems to be quite convincing that the court was wrong in its conclusion; so that I am prepared to maintain the proposition advanced at the first hearing, that whatever the form of the instrument may be, if it be manifest that it was intended by the parties, and that the effect of it was to convey to the creditors all, or substantially all, of the debtor's property in payment of claims due them, to the exclusion of all other creditors that it is not to be recognized or of force under the statute of this State.

But it is said that this conveyance was not of all of Rich's property, and it is true that there were two or three things of little value outside of this conveyance. There were two notes executed by two men named Nathan, one of which at least, was pretty old, and which had been hypothecated to Rich, and by Rich to some one or more of his creditors in security of some claims against him. It is not shown that these notes were of any value. They were for considerable sums, $2,500 each; but there is not a particle of testimony to show that the Nathans could pay them; and from what is said in the evidence it is fairly to be inferred they were worthless; and aside from

that, they were not in Rich's control at the time of this assignment. There was also a half interest in a house and lot, worth about twelve or fourteen hundred dollars, in Leadville. Rich got this half interest by inheritance from his first wife, the other half going to a child or children. That was under a trust deed at the time that this mortgage was executed in the hands of May. I have forgotten whether it is one or the other. It is true that after the execution of this mortgage, these parties, thinking themselves sufficiently secured as to all demands held by them by the chattel mortgage, gave up this trust deed to Rich, and he destroyed it. Apparently the deed had not been put upon record, and so it was enough to destroy it after it was handed back to him; but this was of a small amount, exceedingly small as compared with the value of his stock of goods, and with the great mass of his obligations, and if he had held it absolutely at the time of the execution of this mortgage, which he did not, I do not think it would affect the general result. This mortgage, which transferred to these parties all of the property of Rich substantially which could be appropriated to the payment of his debts, and at once had the effect to close up his business, to make it impossible for him to go on with it, and which was the principal fund, and, in fact, we may say the only fund to which all these creditors would look, the property which they had contributed being the goods and his stock in trade, was about all that the creditors could hope to receive anything from. It is also said in argument that there was something in excess of the demands of May and Hirsch in this stock, particularly if the evidence of the complainants be received in respect to its value at the last hearing, when they were seeking to show that the mortgage was fraudulent as to them, and

ought to be wholly set aside in their favor. But however that may be, the excess of the value of the goods over and above the demands of May and Hirsch upon an instrument of this kind is not to be considered as assets to sustain the conveyance itself, when that is in question, upon the ground that it is an appropriation of all the debtor's property to the payment of these creditors.

As to what was said more by counsel as to the impossibility of carrying on this proceeding in the view that this is an assignment, for want of an assignee, and from certain difficulties that the defendants, May and Hirsch, have fallen into from attachments levied by other creditors upon this stock, there is not much to be said. In respect to the want of an assignee and the proceedings to be had in respect to this property, it seems to be contended that whenever it is announced that this is to be regarded as an assignment for the protection of these complainants, that all things in the statute in relation to assignments must at once be done. That is to say, there must be an assignee, there must be a schedule of goods in some court, and things must have the order and direction which the statute points out. I do not understand that to be the condition of affairs at all. The complainants are here to charge that these parties, seeking to appropriate all of the debtor's property to the payment of their own demands, shall not be allowed to do so, but shall contribute what may be reasonable and just toward the payment of these complainants' demands; that is to say, that they shall retain only their *pro rata* share, and give the rest to the complainants; and that is a position which stands not upon the statute, except as that statute may affect the character of the instrument, and does not require that the terms of the statute shall be

fulfilled in every part. That would follow only if the parties themselves had recognized the statute, and pursued it in the form of their instrument and otherwise, as the law requires. And as to what may have happened to the defendants in attachment proceedings in other courts, we cannot be concerned here until they arise in some form that may require recognition in these proceedings. In any remedy which may be afforded to a party who is in court against another, courts do not forbear upon any suggestion as to what may be going on in other tribunals. Whenever judgments are given in other courts which can be pleaded in bar of suits which are going on here, they are to be recognized, but not otherwise.

I think that these complainants are to be allowed to go on, with some calculation to be made by a master as to the amount which they may be entitled to from the proceeds of this property which was conveyed to May and Hirsch by this mortgage, substantially as announced in the opinion given in March last.

Mr. Gunnell—Will your Honor order that the master in chancery shall be guided as to the value of the property by the price it brought, or will he be required to find the value of the property?

The Court—I suppose he will have to find the value of the property, if the parties require it. I don't know what the plaintiffs claim in that respect. There is no one here representing the plaintiffs to-day, I believe.

Mr. Gunnell—No, sir, Mr. Thompson is away.

The Court—I think the complainants are entitled to go upon the value, if they wish to do so.

Mr. Gunnell—I don't understand this to be a final decree, from which an appeal would lie.

The Court—No, sir, I suppose the final decree could only be made when the master shall make report.

Mr. Gunnell—I wish to save an exception. I am aware, from your honor's remarks, of the fact that it is not disputed, so far as this decision goes, that there are a number of attachment suits brought by other people. We would ask, if your honor pleases to allow us, to report to the master that other little testimony, so it may go into the record, that it may be apparent in the record.

The Court—Well, sir.

In the Circuit Court of the United States for the District of Colorado, March 1st, 1889.

HALLETT, J. (orally):

In *Tenney* v. *Rich*, and others, and *Leopold* against *Rich* and others, exceptions were made to the master's report, upon the ground that certain claims and demands were allowed which accrued against a firm of Nathan & Company, which was composed of Rich, one of the respondents in this suit, and one Nathan. The circumstances are, that the business in which Rich was engaged at the time of his insolvency, and at the time of executing the chattel mortgage to the defendants, May and Hirsch, was formerly conducted by Nathan & Co.; and Rich succeeded to it, Nathan retiring from the firm. The business was carried on by Rich for a year or two.

(I do not remember the length of time precisely.) He made debts, some of which were due to May and Hirsch, and upon his insolvency and the conveyance to these defendants, who have been charged as his assignees in this proceeding, the claims have been put in — claims against the firm of Nathan & Co.— and it is objected that Mr. Rich is in the position sometimes assigned to one

firm succeeding another, and that his creditors may claim his assets to the exclusion of all creditors of the firm of Nathan & Company. Obviously this argument is to the effect that Rich is in the position of a co-partnership, doing business, having assets which creditors having demands accruing against him since the dissolution of the firm of Nathan & Co. have a peculiar right to.

It was not stated that way in argument here in court; but of course the principle invoked makes it necessary to maintain that Rich is in such a position as that. Now, I do not see that the principle to which counsel appeal has any application whatever to the circumstances. Upon the dissolution of the firm of Nathan & Co. the debts of that firm became the individual debts of Rich and Nathan; the fact that Rich assumed those debts in his agreement with Nathan is of no importance whatever to the creditors. Nathan was not thereby discharged from liability to the creditors of the firm, and Rich's responsibility for those debts was not in any way augmented; the debts of the firm did not become his individual debts by virtue of such agreement; and so the debts of that firm standing against Rich are, in contemplation of law, precisely in the same condition as those which were incurred by him individually after the dissolution of the firm. If, indeed, Rich had formed another partnership after the dissolution of Nathan & Co., and that new partnership had incurred debts, then counsel might, with reason, contend that the debts of the new firm should be paid to the exclusion of those of the old firm. The authorities are to this effect. But Rich is not in that position at all. He did not form a new partnership; he went on as an individual doing business alone, and the debts incurred by him are of the same dignity and character, and his cred-

itors who came to him in that position are in precisely the same predicament as those who were of the firm of Nathan & Co. If this were not true, the respondents in this suit excepting to the master's report are in no position to claim the benefit of the principle for which they contend. They proved their own debt, covering a claim of seven thousand dollars and more, which was of the firm of Nathan & Co., and having taken a chattel mortgage to secure the entire indebtedness to themselves, including the former debt of the firm of Nathan & Co., and thus sought to appropriate all of Rich's property to the payment of their own demand in the first instance, and then, after this proceeding was brought, to charge them as assignees under the insolvent law of the State and subject the property of Rich to the payment of all debts of Rich existing at the time of making the chattel mortgage, they proved their entire indebtedness, as well that which accrued against the firm of Nathan & Co., and that which accrued against Rich alone, they are in no position to ask that other creditors, who are doing the same thing, should be excluded from participating in the assets of Rich. It is also a ground of exception that the master has put the value of the goods obtained by the respondents under the chattel mortgage too high. He put the amount at something over $31,000. I believe the proof is that upon the sale under the chattel mortgage by respondents in this action something over $20,000 was realized from the goods; and the witnesses, some of them interested in these proceedings, and some who are not, have placed the value of the goods at that sum or less, and ranging from that up to $45,000.

The master has adopted a price which is somewhere between the extremes assigned by the witnesses for com-

plainants and respondents. He has also set forth his reasons for doing that. I do not think it is very material to consider the reasons.

Objection is made that he was going somewhat upon his own experience in matters of this kind; he says that he has had a good deal of experience in determining the value of stocks in insolvency, and, therefore, he proceeded upon certain principles, which he defines, and according to those rules he reaches a conclusion that the stock of goods was worth something above $31,000. Certainly it is no objection that he has relied to some extent upon his own experience in such matters. That is what every one does in trying to reach a conclusion upon a matter of this kind, where the evidence is highly contradictory, and it seems to follow the testimony of any one witness. Juries do that thing constantly, and courts, so far from disapproving of the exercise of their judgment in that way, have expressly sanctioned it. Upon all the testimony which is given in the record, I am unable to say that the conclusion of the master is subject to the criticisms which counsel have made upon it. I am, therefore, inclined to overrule the exceptions and to uphold the report and make a decree according to it.

Since the exceptions to the report were filed the master has made a supplemental report including two other claims which he finds entitled to participate in these assets, and in that respect the first report is somewhat modified; I can see no objection to it in any way, and it will be understood that it stands approved. * * *

Since the first cases were decided, and very recently, the Supreme Court of the United States has given an opinion in which the rule adopted in this case is fully recognized. In this opinion two or three sentences from

the cases of *Martin* v. *Hausman* and *Kerbs* v. *Ewing*, are quoted with approval, and I will read them to show what the Supreme Court has said upon this general topic. This is from a newspaper (Chicago Inter Ocean, Feb. 14), but I suppose the opinion to be authentic: "A merchant may give a mortgage or a deed "of trust of part or all of his property to secure one or "more of his creditors, thus preferring them, but he can- "not convey the whole of his property to one or more "creditors and stop doing business. Such turning over "and virtually declaring insolvency, brings the instrument "or act by which it is done within the assignment law of "Missouri, which requires a distribution of the property "of the failing debtor for the benefit of all the creditors "in proportion to their respective claims. Such is the "declared policy of the law; it places all creditors upon "an equal footing."

* * * * * * * * * * *

"No matter what the form of the instrument, where "a debtor, being insolvent, conveys all his property to a "third party, to pay one or more creditors, to the exclu- "sion of others, such a conveyance will be construed to "be an assignment for the benefit of all the creditors, the "preference being in contravention of the assignment "laws of this State."

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 99.

DAVID MAY AND ADOLPH HIRSCH, APPELLANTS,

vs.

DANIEL K. TENNEY, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Colorado.

Reply of Appellants to Brief of Appellee.

C. S. THOMAS,
Solicitor for Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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The position taken by the appellee in his brief and argument indicates that his counsel, conscious of the untenable attitude assumed by the trial court, finds it necessary to sustain the decree, if possible, by a resort to argument, not only not presented to the consideration of that court, but, in some respects, opposed to the allegations of his bill and to the stipulations of record. The assurance here given that the counsel now representing the appellee did not appear for

him in the court below is doubtless because apparently essential to an explanation of the novel assumptions which appear for the first time in the history of the action as the foundation for the decree from which the appeal has been taken.

It is now asserted that the chattel mortgage, which forms the basis of this controversy, appears "to have been intended as an insolvent assignment for the benefit of creditors, and contains none of the distinguishing elements of a mortgage." The first conclusion, therefore, is that it is only a mortgage because it is labelled such. That may be a proper one. The other and ultimate conclusion, that, not being a mortgage, it is a general assignment for the benefit of all creditors, can only be sustained by ignoring or violating the terms of the Colorado statutes.

The appellee is a distinguished member of the Chicago bar and a commercial lawyer of extended and diversified experience. He enjoys an enviable reputation not only in his own State but throughout a great section of the Union. Under his supervising care this case was prepared and tried, and his associate counsel were among the best lawyers of Colorado. It is to be assumed that the bill of complaint was drafted after the most careful investigation and earnest reflection. At that time, and through all the subsequent stages of the case down to the 7th day of December, 1892, the document executed by Rich to the appellants on the 25th day of March, 1887, was treated as and declared to be a chattel mortgage. The bill so states in express terms (printed record, folio 8, p. 5.; folio 9, p. 5). It is true that it is afterwards declared to be, in effect, a preferential assignment, and therefore void, but it is nowhere pretended that such was the

intention of the parties to it. The court below never called it an insolvent assignment for the benefit of creditors except upon the theory that, being intended to give to one creditor the right, through a mortgage, to obtain satisfaction of his own debt to the exclusion of all other creditors, it should, under the Federal decisions construing the Missouri statute, be treated as such an assignment.

Among the reasons given by counsel for their present course of argument is this: that, according to the recitals of the deed, the Carbonate Bank of Leadville was the creditor of Rich, and not the mortgagees, to whom Rich did not owe a dollar. Unfortunately for this assertion, the record contains, at folio 350, pages 244–5, a stipulation in which appellee's counsel expressly admit that the sums specified in the instrument correctly represent the amounts which Rich owed to May & Hirsch. The stipulation involves mutual concessions and must be mutually respected. We cannot evade it, the appellee must not. If such a question had been pressed or even intimated at or before the trial it could have been met without difficulty. The knowledge of this fact caused the making of the stipulation. To claim now that no such indebtedness existed is unfair, and, I submit, too late, even if it were proper, to be urged to the attention of this Court. It is considered by appellee in his argument (p. 22) that the learned judge of the trial court did not notice "these particular and important features of the deed." He certainly did not, nor did any one else, at the time or before then. The presentation of them at this juncture simply means that in order to sustain the decree it is absolutely necessary that other reasons than those assigned for it when made must be found; therefore the appellee should convince this Court,

first, that no debt or obligation from Rich to May & Hirsch existed when the mortgage was executed, and, second, that the mortgage is not a mortgage at all. An assumption of a debt by solvent parties with the consent of all concerned is equivalent in law, at least so far as the original debtor is concerned, to its payment. It requires neither argument, or authority to sustain this proposition. Counsel, being aware of the redemption clause of the mortgage and of its effect upon the structure of their argument, seek to evade it by saying that it is void for uncertainty. It is noticeable that, although prolific in authorities to support some of their positions, no reported case is quoted in justification of this purely arbitrary assertion. An equity of redemption is given in the proviso of the mortgage as clearly and as extensive as it was in the power of language to create, and merely because some goods or a large part of them might be sold before the debtor could avail himself of it, the appellee says it is void. I submit that in view of the contemplated possession of the mortgaged property by the appellants no other redemption clause could have been formulated which would have been more valid.

It does not follow that because Rich's possession of the stock in trade was transferred to appellants, the former was powerless to redeem it. If the stock of goods was of such enormous value, as claimed by appellee, his creditors could easily go to the rescue, or Rich himself, by applying to others, might well be supposed to possess the ability to avail himself of it by using the stock as security.

The appellants, having become responsible for a large amount as sureties for Rich, naturally desired to secure themselves from loss, and the Carbonate Bank on the same prin-

ciple insisted upon a satisfaction in some manner of its unsecured $7,000 claim before it would consent to forego its contemplated attachment. If it did attach, the appellants would probably be subjected to a loss equivalent to their endorsement; hence it was perfectly natural and proper that they should assume payment of the additional obligation as a necessary means of securing themselves against Rich's failure. If, therefore, they did assume it, they were bound to make payment thereof, and the appellee cannot complain even if it be a fact that when the mortgage was made there had not been an actual transfer of money representing the debt from appellants to the bank.

Counsel refer to the indorsement of the note of $7,000 by J. C. Mitchell & Co. Their comments upon this indorsement are doubtless excusable on account of their recent connection with the case. The original indorsement, as will appear from the circuit court record, was "J. C. Mitchell, A. Cr.," meaning assistant cashier, he occupying that position at the time in the Carbonate Bank of Leadville.

But the attention of the Court is drawn to the italicized fact that May & Hirsch, after the preliminary decree of the circuit court, in order to receive their proportion of the assets of the insolvent, proved their claim before the master as a promissory note for $18,400, dated April 4, 1887, in consequence of which it is assumed that no debt existed in their behalf on the 24th day of March previous. The record does not for some reason disclose the proven facts concerning this note nor does it give a copy thereof. The note, however, was doubtless one which the bank took against May & Hirsch for all its claims against Rich and which they paid, as they testified. The fact that it was not executed contemporaneously

with their assumption of the entire liability of Rich to the bank is wholly immaterial. If this were not so, the appellee would have the ground swept from underneath his feet. He says in his bill that his own claim is represented by a note bearing date April 25, 1887 (Record, folio 5, page 3), more than a month subsequent to the making of the mortgage. It is quite true that this note represents antecedent claims; but, on the other hand, it is equally true that the appellants' note also represents antecedent claims. If the principle invoked by the appellee is applicable under the circumstances and will be impartially administered to both sides, we certainly will have no objection.

I care but little for the second point urged by appellee, provided I am right in my claim that under the assignment law of the State of Colorado the amount of property included in a debtor's preferences is immaterial. If, however, a distinction is to be made between the inclusion in a mortgage of a part of the debtor's property and all of it, and a preference is to be sustained in the one case and overthrown in the other, then it is difficult for this or any other court to draw the line between what is and what is not permissible to a debtor in failing circumstances. Whether he is to be upheld in giving a favored creditor a transfer or mortgage of one-fourth, one-fifth, one-half, three-fourths, or nine-tenths, or any other proportion less than the whole of his property, can only be determined in an arbitrary way.

The fact appears that Rich, in addition to the property mortgaged to appellants, held promissory notes aggregating a large sum of money, and also held a half interest in real estate worth about $2,000, which he inherited from his wife,

and on which May held an unrecorded deed of trust, which he surrendered when the chattel mortgage was made. This property was not exempt from attachment, and certainly amounted to something. It will not do to say that the latter instrument covered *substantially* all of Rich's property. If under the law it is such an instrument as will be construed to be a general assignment, because it covers *all* the debtor's property, then that construction is not only in derogation of the common law, but also of an express statute, and must receive strict construction. Nothing less than *all* the property, therefore, must be included in the instrument or it must be upheld.

That part of the appellee's brief which seeks to sustain the reasons given by the trial court in support of its decision I shall not review, because I think it is sufficiently answered in the original brief and argument for the appellants.

It is difficult to prove by argument that an instrument which, if intended to be an assignment at all, is, because of preferences, void under the express terms of the Colorado statute, is *nevertheless* an assignment to be given full force and effect for the benefit of all creditors.

The feat of riding two horses at the same time and going in opposite directions has never been successfully accomplished. I cannot refrain, however, from calling the Court's attention to the cases cited by appellee on page 21 and which are made the subject of special comment. Appollos *vs.* Brady, 49 Fed., 401, came to the court of appeals from the Indian Territory. There it is decided that the construction given by the supreme court of Arkansas to an assignment law of that State made applicable to the Indian Ter-

ritory would be followed and respected by the Federal courts. This is a proposition which I have never disputed.

The other case—that of Marshall against The Bank, 28 Pacific R., 312—involves a construction of a section of the Montana assignment law giving preference to employees regardless of the provisions of the assignment, and does not in anywise affect the case at bar, because the Montana statute is materially different from that of Colorado.

A large number of authorities were cited by counsel for appellant in that case in support of the proposition that a debtor might, although insolvent, make a mortgage or deed of trust to prefer some one or more of his creditors to the detriment of the remainder. The court recognizes the force of these authorities, but disposes of them in the following language: "But these were cases from States where assignments for the benefit of creditors with preferences were forbidden by statute. Instruments and transactions which upon their face were mortgages or transfers in payment, or confessions of judgment, were sought to be construed as attempted preferential assignments. We have no such statutory prohibition in this State, and in the case at bar we are not considering a transaction which appears *prima facie* to be a mortgage." (Page 313.)

I do not care to comment upon those opinions of the learned judge who tried the case, and which are appended to the appellants' brief, except to say that the facts which in the opinion of March 5, 1888, are shown to be of no moment whatever seem to have been relied upon almost entirely as the basis of the opinion of July 30, 1888. A comparison of pages 36 to 39 with pages 44 to 46 will support this impression.

I submit that there is nothing in the brief and argument of appellee which overthrows the facts contended for in the original brief for the appellants.

Respectfully submitted.

C. S. THOMAS,
Solicitor for Appellants.